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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 54, No. 41
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Naval Orange Reg. 690]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 690 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 3 through March 9, 1989. Such action is needed to balance the supply of fresh navel oranges with the demand for such oranges during the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 690 (§ 907.990) is effective for the period March 3, 1989, through March 9, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2528-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 907 [7 CFR Part 907], as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order, and approximately 4,065 producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and produces of California-Arizona navel oranges may be classified as small entities.

This action is consistent with the marketing policy for 1988-89 adopted by the Navel Orange Administrative Committee (Committee). The Committee met publicly on February 28, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a seven to three vote a quantity of navel oranges deemed advisable to be handled during the specified week. The Committee reports that the market for navel oranges is weaker.

Based on consideration of supply and market conditions, and the evaluation of alternatives to the implementation of prorate regulations, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navel oranges.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.990 is added to read as follows: [This section will not appear in the Code of Federal Regulations.]

§ 907.990 Navel Orange Regulation 690.

The quantity of navel oranges grown in California and Arizona which may be handled during the period March 3, 1989, through March 9, 1989, are established as follows:

(a) District 1: 1,216,000 cartons;
(b) District 2: 234,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: unlimited cartons.

Dated: March 1, 1989.

Eric M. Forman,
Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-5109 Filed 3-2-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 655]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 655 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 375,126 cartons during the period March 5 through March 11, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 655 (§ 910.955) is effective for the period March 5 through March 11, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The Committee met publicly on February 28, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.955 is added to read as follows: [This section will not appear in the Code of Federal Regulations.]

§ 910.955 Lemon Regulation 655.

The quantity of lemons grown in California and Arizona which may be handled during the period March 5, 1989, through March 11, 1989, is established at 375,126 cartons.

Dated: March 1, 1989.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-5108 Filed 3-2-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-05; Amdt. 39-6075]

Airworthiness Directives; Switlik Parachute Co., Inc. TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection for cracks and, if needed, replacement of carbon dioxide (CO_2) inflators on Switlik TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices. The AD is needed to prevent the malfunctioning of the CO_2 inflators on TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices which could result in inadequate inflation of the devices when operated during emergency conditions.

DATES: Effective April 3, 1989. Compliance—As required in the body of the AD. Incorporation by Reference—Approved by the Director of the Federal Register as of April 3, 1989.

ADDRESSES: The applicable service bulletin (SB) may be obtained from Switlik Parachute Co., Inc., 1325 East State Street, P.O. Box 1328, Trenton, New Jersey 08607.

A copy of Switlik SB No. 25-00-19, dated September 8, 1987, is contained in the Rules Docket, Docket No. 88-ANE-05, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adrew Gfrerer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York NY 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD which requires inspection for cracks and, if needed, replacement of CO_2 inflators on certain Switlik TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices was published in the Federal Register on March 18, 1988 (53 FR 8926).

The proposal was prompted by reports of cracked CO_2 inflators on Switlik TSO-C13 Life Preservers and TSO-C72 Individual Flotation Devices which could result in inadequate inflation of the devices when operated during emergency conditions.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all the comments received.

A total of nine comments were received, two of which concurred with the AD as proposed, and seven proposed that changes be made by extending the compliance time. Following consideration of those comments, it was determined that the proposal would be changed by extending the compliance period to one year.

Three commenters proposed that the compliance time should follow the requirements set forth in Switlik Service Bulletin No. 25-00-19, dated September 8, 1987, which sets compliance time at the next regularly scheduled service. The FAA disagrees. A compliance time set at the next regularly scheduled service could occur at 24, 36 or as much as 48 months from the effective date of the AD depending on the airline. The proposed interval is not adequately defined, does not provide an adequate level of safety during the inspection/retrofit program due to the lengthy proposed compliance interval and would increase the chance for malfunction of the CO_2 inflator when it would be needed.

Another commenter mentioned that its life vests do not have manufacture dates on the life vest package and they must open and unfold all vests to checks for date, which would take extra time. The FAA requires all operators to carry out their inspections by looking for dates that are printed on the life vest and not on the life vest package. The reason for this is that the life vest might have been taken out of the package and repackaged in a different package. This procedure will take longer and the compliance time has been extended as mentioned above.

Another commenter feels that they must reinspect all its life preservers because of AD documentation requirements in the proposed AD. The FAA has determined that reinspection of the life preservers is not necessary if satisfactory documentation is available to show that the inspections have previously been accomplished. This is pointed out in the compliance statement in the AD, "Compliance Is Required As Indicated, Unless Already Accomplished."

Some commenters mentioned that every life preserver and individual flotation device must be first checked for date of manufacture, which would take extra time and expense. The FAA agrees that additional labor is involved in determining whether the life preservers and the individual flotation devices were manufactured during the time interval stated in the AD and has extended the compliance time so that this can be accomplished during normal aircraft maintenance periods. The labor expended for inspection, and replacement if necessary, of inflators in the life preservers and the individual flotation devices which were manufactured within the time period stated in the AD is less than 3 (three) minutes per unit according to the manufacturer, Switlik Parachute Company. The FAA has reviewed the manufacturer's estimate and has increased the time to inspect, and replace if necessary, to 5 (five) minutes per inflator. Although the FAA is unable to specifically identify all costs associated with determining manufacture date, the increase in the manufacturer's time assessment to complete compliance, from less than 3 (three) minutes to 5 (five) minutes, is considered a proper assessment of the time required to comply with the AD. Further, the FAA has determined that the cost associated with this estimated time is realistic.

Another commenter also mentions that the FAA used a very general term, "service", in the compliance statement, "At next regularly scheduled service * * *". Since "service" is not defined, the compliance period is open for interpretation, for example, Preserver/Flotation Device Service, or does it mean the next scheduled A, B, or C check? The commenter suggests that we remove "At next regularly scheduled service" from the compliance statement.

The FAA agrees, and the following changes have been made to the compliance statement. The text in the AD will change from, "At the next regularly scheduled service or within six (6) months after the effective date of this AD, whichever comes first, visually inspect * * *" to, "Within one year after the effective date of this AD, visually inspect * * *".

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of governments. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion: The FAA has determined that this regulation involves approximately 69,220 inflators, and will cost approximately $3.50 labor for both inspection and replacement, if replacement is required. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new airworthiness directive (AD):

Switlik Parachute Company, Inc.: Applies to Switlik TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices: all models and all part numbers manufactured from September 1, 1984, through January 30, 1985, and June 1, 1985, through October 30, 1985 (date located on identification label on front surface).

Compliance is required within one year after the effective date of this AD, unless already accomplished.

To prevent the improper functioning of the carbon dioxide (CO_2) inflators on TSO–C13 Life Preservers and TSO–C72 Individual Flotation Devices, accomplish the following:

(a) Visually inspect the CO_2 inflators for cracks and chipping and, if necessary, replace CO_2 inflators with serviceable parts in accordance with Paragraph 2, Accomplishment Instructions of Switlik Parachute Company, Inc., Service Bulletin No. 25–00–19, dated September 8, 1987.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Valley Stream, New York 11581.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, New York Aircraft Certification Office, Federal Aviation Administration, Engine and Propeller Directorate, Aircraft Certification Service, 181 South Franklin Avenue, Valley Stream, New York 11581, may adjust the compliance time specified in this AD.

Switlik Service Bulletin No. 25–00–19, dated September 8, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Switlik Parachute Co., Inc., 1325 East State Street, P.O. Box 1328, Trenton, New Jersey 08607.

This document may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket No. 88–ANE–05.

This amendment becomes effective on April 3, 1989.

Issued in Burlington, Massachusetts, on November 9, 1988.

Arthur J. Pidgeon,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89–4960 Filed 3–2–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 87–AWA–54]

Alteration of Airport Radar Service Area; Metropolitan Oakland International, CA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Airport Radar Service Area (ARSA) at Metropolitan Oakland International Airport, CA. This modification adjusts the lateral limits of the ARSA to exclude that airspace that is within the outer core of the ARSA, north of Interstate 580. This airspace is being excluded so that the heavily used visual flight rules (VFR) route, north of Interstate 580, will not be compressed below 2,100 feet mean sea level (MSL).

EFFECTIVE DATE: 0901 U.T.C. April 6, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

History

On September 30, 1985, the FAA proposed to designate an ARSA at the Metropolitan Oakland International Airport, CA (50 FR 39822) The FAA, after carefully considering all comments received and making alterations where appropriate, adopted the proposal and published the final rule in the March 10, 1986, issue of the **Federal Register** (51 FR 8284) with an effective date of April 9, 1987.

On October 21, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to modify the Metropolitan Oakland International Airport, ARSA (53 FR 41512). This rule modifies the ARSA at the Metropolitan Oakland International Airport. Interested parties were invited to partcipate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Additionally, the FAA held informal airspace meetings for this proposal on July 6, 11, 12 and 13, 1988. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The only comment received concerning the Oakland ARSA alteration was from the Department of the Army. The Army wrote in approval of the alteration stating that army aviation operations in the Livermore/Parks Range area would be facilitated.

The Rule

This action modifies the ARSA at Metropolitan Oakland International Airport, CA. The lateral limits of the ARSA will be reduced to exclude airspace that is within the outer core of the ARSA, north of Interstate 580. This airspace is being excluded so that the heavily used VFR route, north of Interstate 580, will not be compressed below 2,100 feet MSL.

Regulatory Evaluation Summary

The following is a summary of the cost impact and benefit assessment of the final rule to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71). A more detailed regulatory evaluation has been placed in the docket (87–AWA–54). The objective of this rule is to modify the Metropolitan Oakland International Airport Radar Service Area (ARSA) as follows:

Eliminate the area within the outer core, north of Interstate 580. Interstate 580 is a well known, easily recognizable landmark for VFR aircraft. During user forums and feedback sessions since the original implementation of this ARSA, substantial comments have been received supporting the exclusion of this area so that the heavily used VFR route north of Interstate 580 is not compressed below 2,100 feet MSL.

Summary of Costs

The FAA estimates the costs associated with this rule to be very minimal. The rationale for this determination is based upon two factors:

1. The cost evaluation for the final rule ("Establishment of Airport Radar Service Areas" 51 FR 8284, March 10, 1986) determined that potential costs would not materialize to any appreciable degree, and when they do occur, they would be transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites.

2. Since this rule seeks to reduce ARSA controlled airspace, there should be little or no costs to the aviation public. Costs associated with a reduction in safety are not expected because the rule will reduce congestion in the affected airspace, and the final approach to Metropolitan Oakland International's Runway 27 is still protected by the ARSA's outer core.

Sectional charts will continue to be updated during the regular chart cycle.

Summary of Benefits

The FAA expects that the benefits of this rule will accrue in three areas. First, controllers will have less airspace to monitor thereby enabling them to better concentrate on traffic in and around Metropolitan Oakland traffic patterns. Second, increased airspace in the Lake Chabot area outside the ARSA will reduce congestion and provide users more freedom while maintaining existing levels of safety within and around the Oakland ARSA. Finally, aircraft noise will be reduced considerably by allowing nonparticipating aircraft to cross Castro Valley at a higher altitude.

Conclusion

On balance, the FAA believes that this airspace modification will benefit various users at a near zero cost and expects that the establishment of this rule will produce long term, ongoing benefits that will far exceed any costs which may be incurred.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 requires agencies to identify rules that will have a significant economic impact on small entities, including small businesses.

This action to reduce the ARSA area north of Interstate 580 will release airspace not required for safety reasons. The establishment of this rule will, in effect, increase public airspace outside of ARSA control and, thus, will not pose an economic burden upon independently owned and operated small businesses and small not-for-profit organizations.

Trade Impact Statement

This regulation will only impact the Metropolitan Oakland International ARSA. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States products or services in foreign countries.

For these reasons, the FAA certifies that this amendment will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. § 71.501 is amended as follows:

Metropolitan Oakland International Airport, CA [Revised]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Metropolitan Oakland International Airport (lat. 37°43'17" N., long. 122°13'11" W.), excluding that airspace contained within the San Francisco, CA, Terminal Control Area (TCA); and that airspace extending upward from 1,500 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Metropolitan Oakland International Airport, excluding that airspace contained within the San Francisco TCA, and that airspace beyond a 5-mile radius from the Metropolitan Oakland International Airport from the Oakland VORTAC 004° radial clockwise to the northern edge of U.S. Interstate 580, and that airspace beyond the 15-mile radius of the San Francisco TCA.

Issued in Washington, DC, February 16, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-4961 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-26]

Alteration of Transition Area—Macomb, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Macomb, IL, transition area to accommodate new NDB RWY 26 and LOC RWY 26 Standard Instrument Approach Procedures (SIAPs) to Macomb Municipal Airport, Macomb, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 9, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Macomb, IL (54 FR 626). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area airspace near Macomb, IL. The present transition area is being modified to accommodate new NDB RWY 26 and LOC RWY 26 SIAPs. The only modification to the existing airspace is in the transition area extension and the extension consists of an additional 4.5 miles to the east and an additional 1.5 mile width each side of the 090° bearing from Macomb Municipal Airport.

The development of these procedures requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedures may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual fight rule requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Macomb, IL [Revised]

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Macomb Municipal Airport (lat. 40° 31' 11" N., long. 90° 39' 17" W.); and within 4.5 miles each side of the 090° bearing from Macomb Municipal Airport extending from the 6-mile radius area to 12.5 miles east of the airport.

Issued in Des Plaines, Illinois on February 21, 1989.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-4962 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25803; Amdt. No. 1394]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference: Approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviatioin Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The Complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30

days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on February 17, 1989.

Robert L. Goodrich,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 4, 1989*

Casey, IL—Casey Muni, NDB RWY 04, Amdt. 5
Casey, IL—Casey Muni, NDB RWY 22, Amdt. 3
Iron Mountain/Kingsford, MI—Ford, LOC/DME BC RWY 19, Amdt. 10
Plymouth, MI—Mettetal-Canton, VOR-A, Amdt. 8
Wildwood, NJ—Cape May County, VOR RWY 23, Amdt. 9
Wildwood, NJ—Cape May County, LOC RWY 19, Amdt. 2
Wildwood, NJ—Cape May County, RNAV RWY 19, Amdt. 4
Akron, NY—Akron, VOR RWY 6, Amdt. 2
Akron, NY—Akron, VOR/DME 24, Amdt. 3
Harrisburg, PA—Capital City, RADAR-1, Amdt. 12, CANCELLED
Middletown, PA—Harrisburg Intl Arpt-Olmsted Fld, RADAR-1, Amdt. 6, CANCELLED

** * * Effective April 6, 1989*

Alexander City, AL—Thomas C. Russell Fld, NDB-A, Orig
Alexander City, AL—Thomas C. Russell Fld, NDB-A, Amdt. 7, CANCELLED
Huntsville, AL—Huntsville Intl-Carl T. Jones Field, ILS RWY 36L, Amdt. 7
Mobile, AL—Bates Filed, VOR OR TACAN-A, Orig
Monte Vista, CO—Monte Vista Muni, VOR/DME-A Amdt. 2
Monte Vista, CO—Monte Vista Muni, VOR/DME-A, Amdt. 2
Monte Vista, CO—Monte Vista Muni, NDB RWY 20, Orig
Bedford, MA—Laurence G. Hanscom Fld, ILS RWY 29, Amdt. 2
Obyan, N Mariana Islands—Saipan Intl, NBD/DME RWY 7, Amdt. 3
Obyan, N Mariana Islands—Saipan Intl, ILS/DME RWY 7, Amdt. 4
Ainsworth, NE—Ainsworth Muni, VOR RWY 17, Amdt. 1
Ainsworth, NE—Ainsworth Muni, VOR RWY 35, Amdt. 2
Valentine, NE—Miller Field, NDB RWY 31, Amdt. 5
North Platte, NE—Lee Bird Field, VOR RWY 35, Amdt. 16
North Platte, NE—Lee Bird Field, NDB RWY 30L, Amdt. 8
North Platte, NE—Lee Bird Field, NDB RWY 30R, Amdt. 2
North Platte, NE—Lee Bird Field, ILS RWY 30R, Amdt. 4
North Platte, NE—Lee Bird Field, RNAV RWY 12L, Amdt. 2
Lebanon, NH—Lebanon Muni, ILS RWY 18, Amdt. 1
New York, NY—John F. Kennedy Intl, ILS RWY 31R, Amdt. 13
Greenville, SC—Donaldson Center, NDB RWY 4, Amdt. 3
Greenville, SC—Donaldson Center, ILS RWY 4, Amdt. 1
Brenham TX—Brenham Muni, VOR/DME RWY 16, Orig
Brenham TX—Brenham Muni, NDB RWY 16, Amdt. 4
Barre-Montpelier, VT—Edward F. Knapp State, LOC RWY 17, Amdt. 5
Barre-Montpelier, VT—Edward F. Knapp State, ILS RWY 17, Amdt. 3

** * * Effective March 9, 1989*

Boston, MA—General Edward Lawrence Logan Intl, ILS RWY 4R, Amdt. 6
Bassett, NE—Rock County, NDB RWY 31 Amdt. 2
Tekamah, NE—Tekamah Muni, VOR RWY 32, Amdt. 3

** * * Effective February 10, 1989*

Fort Lauderdale, FL—Fort Lauderdale/Hollywood Intl, ILS RWY 9L, Amdt. 14
Dublin, GA—W.H. "Bud" Barron, LOC RWY 2, Amdt. 2
Dublin, GA—W.H. "Bud" Barron, NDB RWY 2, Amdt. 1
Dublin, GA—W.H. "Bud" Barron, RNAV RWY 20, Amdt. 2

** * * Effective February 9, 1989*

Windsor Locks, CT—Bradley Intl, VOR RWY 15, Amdt. 1
Baltimore, MD—Martin State, ILS RWY 32, Amdt. 3

** * * Effective February 7, 1989*

West Union, IA—George L. Scott Muni, NDB RWY 35, Amdt. 3
Elmira, NY—Elmira/Corning Regional, ILS RWY 6, Amdt. 2
Elmira, NY—Elmira/Corning Regional, ILS RWY 24, Amdt. 16

[FR Doc. 89-4963 Filed 3-2-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket No. RM89-9-000; Order No. 511]

Statement of Policy Permitting Limited Intervention by Fish and Wildlife Agencies at the Appeal Stage of a Licensing Proceeding

Issued February 17, 1989.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Statement of policy.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is establishing a policy permitting limited intervention by fish and wildlife agencies at the appeal stage of a licensing proceeding.

Until a rule is adopted addressing mechanisms for fish and wildlife agencies to appeal license orders when they have not previously intervened in the proceeding, it will be the Commission's policy to allow a fish and

wildlife agency to intervene in a licensing proceeding within 30 days after Commission staff has issued an order rejecting or materially modifying any of the fish and wildlife agency's recommendations submitted pursuant to the Fish and Wildlife Coordination Act, for the limited purpose of appealing such rejection or material modification. The intervention petition must be accompanied by the appeal. This policy will provide fish and wildlife agencies a chance to participate at the appeal stage of a proceeding without requiring them to intervene in those proceedings where a reason to appeal may never arise.

EFFECTIVE DATE: This statement of policy is effective February 17, 1989.

FOR FURTHER INFORMATION CONTACT: Jessica Seigel, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–5775.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this statement of policy will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Statement of Policy

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Tradbandt, Elizabeth Anne Moler and Jerry J. Langdon.

The Federal Energy Regulatory Commission (Commission) has instructed staff to prepare a notice of proposed rulemaking (NOPR) on the conflict resolution procedures prescribed by section 10(j) of the Federal Power Act (FPA), as amended by section 3(a) of the Electric Consumers Protection Act of 1986 (ECPA).[1] One of the matters that the NOPR will address is mechanisms for fish and wildlife agencies to appeal license orders when they have not previously intervened in the proceeding. Until a rule resolving this matter is adopted, the Commission is establishing a policy to permit certain appeals by fish and wildlife agencies that have not previously intervened a proceeding.

Section 10(j) of the FPA requires hydroelectric licenses issued under the FPA to include conditions, based on recommendations submitted pursuant to the Fish and Wildlife Coordination Act by state and federal fish and wildlife agencies, for the protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat). Whenever the Commission believes that a fish and wildlife agency's recommendations may be inconsistent with the purposes and requirements of applicable law, section 10(j)(2) requires that it attempt to resolve such inconsistency. If the inconsistency cannot be resolved and the Commission does not adopt the agency's recommendation, section 10(j)(2) requires it to publish findings that adoption of such recommendation is inconsistent with the purposes and requirements of applicable law and that the conditions selected by the Commission will adequately and equitably protect, mitigate damage to, and enhance fish and wildlife affected by the project. This is done in the licensing order.

The percentage of proceedings in which an agency's recommendations are held to be inconsistent with applicable law is exceedingly small. However, where a license is issued by the staff pursuant to delegated authority and a fish and wildlife agency is not a party, it will not be able to ensure that the Commission itself will review rejection of one or more of its recommendations. In order that the agencies will not have to intervene in every licensing proceeding so as to preserve their right of appeal to the Commission itself in such an instance, it will be the Commission's policy to allow a fish and wildlife agency to intervene in such a proceeding within 30 days after the issuance by staff pursuant to delegated authority of an order rejecting or materially modifying any of its fish and wildlife recommendations, for the limited purpose of permitting that agency to appeal such action to the Commission itself. The agency's intervention and appeal must be filed simultaneously.

We believe the establishment of this policy provides a practical way to allow fish and wildlife agencies, who have an important statutory role in the licensing process, to participate at the appeal stage of a proceeding, without requiring them to intervene in a large number of proceedings where the necessity for appeal may never arise.

Effective Date

The Administrative Procedure Act exempts statements of policy from both the notice and comment requirements of section 4(b) of the Administrative Procedure Act [2] and the requirement that publication be made 30 days before the effective date of the rule.[3] Therefore, this statement of policy is effective February 17, 1989.

By the Commission, Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

TRABANDT, Commissioner, *Concurring:*

I have publicly stated that a proposed rulemaking on the conflict resolution procedures prescribed by § 10(j) of the Federal Power Act, and the instant policy statement are both unnecessary and inappropriate, because current Commission practice (1) is completely consistent with the legislative history of the Conference Report enacted by Congress, and (2) implements dispute resolution in an effective and efficient manner for the mutual benefit of license applicants and fish and wildlife resources. However, my colleagues have decided to instruct staff to prepare a notice of proposed rulemaking on the conflict resolution procedures prescribed by § 10(j), and address in that proposed rule mechanisms for fish and wildlife agencies to appeal license orders when they have not previously intervened in the proceeding.

I remain seriously concerned that any parties be granted special administrative procedural rights not established expressly by statute, as would be the case here. I do not consider the enactment of § 10(j) by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495, 100 Stat. 1243 (Oct. 16, 1986) to constitute express statutory direction that fish and wildlife agencies be granted automatically late intervention, particularly after a license has been issued. A better course of action would be to require the Commission staff to notify such agencies of any decision to modify their recommendations in the 10(j) process and provide a period of 30 days thereafter for late intervention before a license issued. The majority here has created inadvertently a conditional license whenever a recommendation of a fish or wildlife agency

[1] 16 U.S.C. 803(j) (1982).

[2] 5 U.S.C. 553(b) (1982).

[3] 5 U.S.C. 553(d) (1982).

is not adopted without modification in the 10(j) process. In my judgment, that result is not consistent with the Federal Power Act nor the Congressional intent of ECPA.

Nevertheless, the majority deems it important to ensure the right of intervention under such circumstances and, in any event, this issue will be considered further in the rulemaking process. Therefore, as an interim measure, I reluctantly concur with this policy determination.

Charles A. Trabandt,

Commissioner.

[FR Doc. 89-5003 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 2, 5, 7, 10, 12, 13, 14, 16, 20, 21, 25, 50, 56, and 58

[Docket No. 88N-0002]

Certain Regulations; Editorial Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its regulations to correct cross-references and typographical errors, to update the titles and mailing symbols of certain organizational units, and to make technical revisions of, and renumber certain paragraphs in, the agency's list of standing advisory committees to reflect recent changes in the committee charters and a recent agency reorganization. This action will improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: FDA is revising certain of its regulations in Subchapter A of Title 21 of the Code of Federal Regulations to correct cross-references and typographical errors and to update the titles and mailing symbols of certain organizational units. The affected regulations are 21 CFR 1.24(a)(6) (i), (ii) and (iii), 1.96(a)(3), 2.19, 2.125 (d), (g), (h)(1), (h)(2), the introductory text, and (i), 5.10(a)(7), 5.30(c), the introductory text, 5.45(c), the introductory text, 5.63(b), 5.110(c), 7.73, the introductory text, 10.1(a), 10.3 (a) and (b), 10.20(c)(1)(v), 10.25(a), 10.30 (b) and (h)(4), 10.35(d), 10.40(b)(1)(ix) and (i)(1), 10.45(f), 10.50(a)(2), 10.55(c), 10.80(d)(2)(iii)(*b*), 10.90(b) (4) and (5), 10.95(d)(1), the introductory text, and (d)(2), 10.100(b)(3)(v), 10.203(b), 10.206(a), 12.21(a)(2), 12.22(a)(5) (i)(*c*) and (b), the introductory text, 12.24 (b)(6) and (c), 12.50(a), 12.85(a), the introductory text, and (a)(2), 13.15(a), 13.25(b), 14.1(a)(2)(ix), 14.20(b)(9), 14.22(a)(1), 14.75(a) (6) (i) and (ii), 14.80(d), 14.84(c)(1), 14.100, 14.125(d), 14.171(d), (e), and (f), 16.1(b)(2), 16.24(c), 16.40, 16.42(c)(1), 16.119, 20.21(b), 20.42(c), 20.50, 20.81(a)(3), 20.100(c)(3), (13), (14), (15), (16), (17), and (21), 20.103(b), 20.112(a), 20.117(a)(3) and (b), 21.45(c), 21.71 (e)(4), 25.15(c)(18), 25.22(a)(14), 25.24(c)(4), 50.3(b) (6) and (11), 56.102(b) (6) and (10), 58.3(e) (5) and (9), and 58.195(b)(1).

Because these amendments are nonsubstantive notice and public procedures and delayed effective date are unnecessary (5 U.S.C. 553 (b)(B) and (d)).

List of Subjects

21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 7

Administrative practice and procedure, Consumer protection, Infants and children, Reporting and recordkeeping requirements.

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 12

Administrative practice and procedure.

21 CFR Part 13

Administrative practice and procedure.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 21

Privacy.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 50

Prisoners, Reporting and recordkeeping requirements, Research, Safety.

21 CFR Part 56

Reporting and recordkeeping requirements, Research, Safety.

21 CFR Part 58

Laboratories, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 1, 2, 5, 7, 10, 12, 13, 14, 16, 20, 21 25, 50, 56, and 58 are revised as follows:

PART 1—GENERAL REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

1. The authority citation for 21 CFR Part 1 continues to read as follows:

Authority: Secs. 4, 5, 6 (15 U.S.C. 1453, 1454, 1455); secs. 201, 403, 502, 505, 512, 602, 701 (21 U.S.C. 321, 343, 352, 355, 360b, 362, 371).

§ 1.24 [Amended]

2. Section 1.24 *Exemptions from required label statements* is amended in paragraphs (a)(6) (i), (ii), and (iii) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 1.96 [Amended]

3. Section 1.96 *Granting of authorization to relabel and recondition* is amended in paragraph (a)(3) by removing "Bureau of Customs" and replacing it with "U.S. Customs Service".

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

4. The authority citation for 21 CFR Part 2 continues to read as follows:

Authority: Sec. 701, 52 Stat. 1055-1056 as amended (21 U.S.C. 371).

§ 2.19 [Amended]

5. Section 2.19 *Methods of analysis* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

6. Section 2.125 is amended in paragraph (d) by removing "Antibiotic Form 5 or 6" and replacing it with "antibiotic application", in paragraph (g) by removing "§ 314.8" and replacing it with "§ 314.70", in paragraph (h)(1) by removing "§ 314.1" and replacing it with "§ 314.50", by revising the introductory text of paragraph (h)(2), and in paragraph (i) by removing " 'Notice of Claimed Investigational New Drug' " and replacing it with " 'Investigational New Drug Application' " to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(h) * * *

(2) The Food and Drug Administration may find that an abbreviated new drug application conforming to § 314.55 of this chapter is acceptable in lieu of a full new drug application for any product included in the classes of products in paragraph (e) of this section. A finding has been made that an ANDA may be submitted for the following products included in the classes of products listed in paragraph (e) of this section:

* * * * *

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

7. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 3701 *et seq.*; 21 U.S.C. 41 *et seq.*, 61-63, 141 *et seq.*, 301-392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11490, 11921, 12591.

§ 5.10 [Amended]

8. Section 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* is amended in paragraph (a)(7) by removing "notice of claimed exemption for an investigational new drug" and replacing it with "investigational new drug application".

§ 5.30 [Amended]

9. Section 5.30 *Hearings* is amended in the introductory text of paragraph (c) by removing "§ 16.40(b)" and replacing it with "§ 16.42(b)".

§ 5.45 [Amended]

10. Section 5.45 *Imports and exports* is amended in the introductory text of paragraph (c) by removing "Bureau of Customs' " and replacing it with "U.S. Customs Service's".

§ 5.63 [Amended]

11. Section 5.63 *Detention of meat, poultry, eggs, and related products* is amended in paragraph (b) by removing "467(b)" and replacing it with "467f(b)".

§ 5.110 [Amended]

12. Section 5.110 *FDA Public Information Offices* is amended in paragraph (c) by removing "15B-42" and replacing it with "15-05".

PART 7—ENFORCEMENT POLICY

13. The authority citation for 21 CFR Part 7 continues to read as follows:

Authority: Secs. 305, 701(a), 52 Stat. 1045, 1055 (21 U.S.C. 335, 371(a)).

§ 7.73 [Amended]

14. Section 7.73 *Termination of recall* is amended in the introductory text by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition" everywhere that it appears.

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

15. The authority citation for 21 CFR Part 10 continues to read as follows:

Authority: Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 *et seq.*); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.*); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 *et seq.*, Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 *et seq.*); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.*); secs. 1-9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1-10, Ch. 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 *et seq.*); sec. 1 *et seq.*, Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.*); Pub. L. 100-236, 101 Stat. 1731 (28 U.S.C. 2112).

§ 10.1 [Amended]

16. Section 10.1 *Scope* is amended in paragraph (ar by removing "§ 5.1" and replacing it with "§ 5.10".

17. Section 10.3 is amended in paragraph (a) by revising the definition for "Office of the Commissioner," in the definition for "Party" by removing "bureau" and replacing it with "center", in the definition for "The laws administered by the Commissioner" by removing "§ 5.1" and replacing it with "§ 5.10", and in paragraph (b) by removing "of Part 1" and replacing it with "or Part 1" to read as follows:

§ 10.3 Definitions.

(a) * * *

"Office of the Commissioner" includes the offices of the Associate Commissioners but not the centers or the regional or district offices.

* * * * *

§ 10.20 [Amended]

18. Section 10.20 *Submission of documents to Dockets Management Branch; computation of time; availability for public disclosure* is amended in paragraph (c)(1)(v) by removing "§ 310.9 or".

§ 10.25 [Amended]

19. Section 10.25 *Initiation of administrative proceedings* is amended in paragraph (a) by removing "§ 314.1" and replacing it with "§ 314.50".

§ 10.30 [Amended]

20. Section 10.30 *Citizen petition* is amended in paragraph (b) under the heading "CITIZEN PETITION" by removing "5.1" and replacing it with "5.10" and in paragraph (h)(4) by removing "§ 12.5" and replacing it with "§ 12.20".

§ 10.35 [Amended]

21. Section 10.35 *Administrative stay of action* is amended in paragraph (d) by removing "§ 10.80" and replacing it with "§ 10.85".

§ 10.40 [Amended]

22. Section 10.40 *Promulgation of regulations for the efficient enforcement of the law* is amended in paragraph (b)(1)(ix) by removing "§ 25.25(a)(3) (ii) or (iii)", and replacing it with "§ 25.42(b)(3) (ii) or (iii)"', and in paragraph (i)(1) "bureau" is removed and replaced with "center" everywhere that it appears.

§ 10.45 [Amended]

23. Section 10.45 *Court review of final administrative action; exhaustion of administrative remedies* is amended in paragraph (f) by removing "16.80(c)" and replacing it with "16.80(a)".

§ 10.50 [Amended]

24. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended in paragraph (a)(2) by removing "430.20(b)" and replacing it with "314.300".

§ 10.55 [Amended]

25. Section 10.55 *Separation of functions; ex parte communications* is amended in paragraph (c) by removing "430.20(b)(7)" and replacing it with "314.300".

§ 10.80 [Amended]

26. Section 10.80 *Dissemination of draft Federal Register notices and regulations* is amended in paragraph (d)(2)(iii)(*b*) by removing "§ 10.40(f)(9)" and replacing it with "§ 10.40(f)(6)".

§ 10.90 [Amended]

27. Section 10.90 *Food and Drug Administration regulations, guidelines, recommendations, and agreements* is amended in paragraphs (b) (4) and (5) by removing "bureau" and replacing it with "center".

§ 10.95 [Amended]

28. Section 10.95 *Participation in outside standard-setting activities* is amended in paragraph (d)(1), the introductory text, and in paragraph (d)(2) by removing "bureau" and replacing it with "center".

§ 10.100 [Amended]

29. Section 10.100 *Public calendars* is amended by removing and reserving paragraph (b)(3)(v).

§ 10.203 [Amended]

30. Section 10.203 *Definitions* is amended in paragraph (b) by removing "Office of Legislation and Information" and replacing it with "Office of Public Affairs".

§ 10.206 [Amended]

31. Section 10.206 *Procedures for electronic media coverage of agency public administrative proceedings* is amended in paragraph (a) by removing "(HFW–20), Office of Legislation and Information" and replacing it with "(HFI–20), Office of Public Affairs".

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

32. The authority citation for 21 CFR Part 12 continues to read as follows:

Authority: Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 *et seq.*); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.*); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 *et seq.*, Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 *et seq.*); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.*); secs. 1–9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1–10, Ch. 358, 29 Stat. 604–607 as amended (21 U.S.C. 41–50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 *et seq.*); sec. 1 *et seq.*, Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et. seq.*).

§ 12.21 [Amended]

33. Section 12.21 *Initiation of a hearing involving the issuance, amendment, or revocation of an order* is amended in paragraph (a)(2) by removing "§ 314.1(c)" and replacing it with "§ 314.50".

§ 12.22 [Amended]

34. Section 12.22 *Filing objections and requests for a hearing on a regulation or order* is amended in paragraph (a)(5)(i)(*c*) by removing "§ 310.9 or", and in paragraph (b), the introductory text, by removing "hearing clerk" and replacing it with "Dockets Management Branch".

§ 12.24 [Amended]

35. Section 12.24 *Ruling on objections and requests for hearing* is amended in paragraphs (b)(6) and (c) by removing "430.20(b)" and replacing it with "314.300".

§ 12.50 [Amended]

36. Section 12.50 *Advice on public participation in hearings* is amended in paragraph (a) by removing "(HFC–10)" and replacing it with "(HFC–220)".

§ 12.85 [Amended]

37. Section 12.85 *Disclosure of data and information by the participants* is amended in paragraph (a), the introductory text, and in paragraph (a)(2) by removing "bureau" and replacing it with "center".

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

38. The authority citation for 21 CFR Part 13 is revised to read as follows:

Authority: Sec. 201 *et seq.*, Pub. L. 717, 52 Stat. 1040 (21 U.S.C. 321 *et seq.*); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 *et seq.*); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 *et seq.*, Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 *et seq.*); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 *et seq.*, Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 *et seq.*); secs. 1–9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1–10, Ch. 358, 29 Stat. 604–609 as amended (21 U.S.C. 41–50); sec. 2 *et seq.*, Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401–411 notes); sec. 1 *et seq.*, Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 *et seq.*).

§ 13.15 [Amended]

39. Section 13.15 *Separation of functions; ex parte communications; administrative support* is amended in paragraph (a) by removing "bureau" and replacing it with "center".

§ 13.25 [Amended]

40. Section 13.25 *Disclosure of data and information by the participants* is amended in paragraph (b) by removing the word "under" the second time it appears and replacing it with "that".

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

41. The authority citation for 21 CFR Part 14 continues to read as follows:

Authority: 5 U.S.C. 5332 note; 15 U.S.C. 1451 *et seq.*; 21 U.S.C. 41 *et seq.*; 141 *et seq.*, 321–371, 467f(b), 679(b), 821, 1031 *et seq.*; 42 U.S.C. 201 *et seq.*; 257a; 21 CFR 5.10.

§ 14.1 [Amended]

42. Section 14.1 *Scope* is amended in paragraph (a)(2)(ix) by removing "520(1)" and replacing it with "520(f)".

§ 14.20 [Amended]

43. Section 14.20 *Notice of hearing before an advisory committee* is amended in paragraph (b)(9) by removing "§ 14.35(c)(2)" and replacing it with "§ 14.35(d)(2)".

§ 14.22 [Amended]

44. Section 14.22 *Meetings of an advisory committee* is amended in paragraph (a)(1) by removing "§ 14.5(b)(4)" and replacing it with "§ 14.20(b)(4)".

§ 14.75 [Amended]

45. Section 14.75 *Examination of administrative record and other advisory committee records* is amended in paragraph (a)(6)(i) and (ii) by removing "§ 14.22(h)(2)" and replacing it with "§ 14.22(i)(2)".

§ 14.80 [Amended]

46. Section 14.80 *Qualifications for members of standing policy and technical advisory committees* is amended in paragraph (d) by removing "14.86" and replacing it with "14.84".

47. Section 14.84 is amended by revising the last sentence in paragraph (c)(1) to read as follows:

§ 14.84. Nominations and selection of nonvoting members of standing technical advisory committees.

* * * * *

(c) * * *

(1) * * * All nominations are to be submitted in writing to the Office of Consumer Affairs (HFE–40), Food and Drug Administration, Rm. 16–85, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

48. Section 14.100 is revised to read as follows:

§ 14.100 List of standing advisory committees.

Standing advisory committees and the dates of their establishment are as follows:

(a) *Office of the Commissioner—Board of Tea Experts.*

(1) Date established: March 2, 1897.

(2) Function: Advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

(b) *Center for Biologics Evaluation and Research—*

(1) *Allergenic Products Advisory Committee.*

(i) Date established: July 9, 1984.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of allergenic biological products intended for use in the diagnosis, prevention, or treatment of human disease.

(2) *Biological Response Modifiers Advisory Committee.*

(i) Date established: October 28, 1988.

(ii) Function: Reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.The committee will also consider the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and advise the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Commissioner of Food and Drugs of its findings.

(3) *Blood Products Advisory Committee.*

(i) Date established: May 13, 1980.

(ii) Function: Reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

(4) [Reserved]

(5) *Vaccines and Related Biological Products Advisory Committee.*

(i) Date established: December 31, 1979.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

(c) *Center for Drug Evaluation and Research*—(1) *Anesthetic and Life Support Drugs Advisory Committee.*

(i) Date established: May 1, 1978.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anethesiology and surgery.

(2) *Anti-Infective Drugs Advisory Committtee.*

(i) Date established: October 7, 1980.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in infectious diseases.

(3) [Reserved]

(4) *Arthritis Advisory Committee.*

(i) Date established: April 5, 1974.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

(5) *Cardiovascular and Renal Drugs Advisory Committee.*

(i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

(6) *Dermatologic Drugs Advisory Committee.*

(i) Date established: October 7, 1980.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

(7) *Drug Abuse Advisory Committee.*

(i) Date established: May 31, 1978.

(ii) Function: Advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

(8) *Endocrinologic and Metabolic Drugs Advisory Committee.*

(i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in endocrine and metabolic disorders.

(9) *Fertility and Maternal Health Drugs Advisory Committee.*

(i) Date established: March 23, 1978.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

(10) *Gastrointestinal Drugs Advisory Committee.*

(i) Date established: March 3, 1978.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

(11) *Oncologic Drugs Advisory Committee.*

(i) Date established: September 21, 1978.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

(12) *Peripheral and Central Nervous System Drugs Advisory Committee.*

(i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates data on the safeety and effectiveness of marketed and investigational human drugs for use in neurological disease.

(13) *Psychopharmacologic Drugs Advisory Committee.*

(i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

(14) *Pulmonary-Allergy Drugs Advisory Committee.*

(i) Date established: February 17, 1972.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

(15) *Radiopharmaceutical Drugs Advisory Committee.*

(i) Date established: August 30, 1967.

(ii) Function: Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of nuclear medicine.

(d) *Center for Devices and Radiological Health—*

(1) Advisory panels and the dates of their establishments are as follows:

(i) *Anesthesiology and Respiratory Therapy Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(ii) *Circulatory System Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(iii) *Clinical Chemistry and Clinical Toxicology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(iv) *Dental Products Panel.*

(A) Date established: March 5, 1988.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. Reviews and evaluates data concerning

the safety and effectiveness of over-the-counter (OTC) drug products for human use and makes appropriate recommendations to the Commissioner of Food and Drugs.

(v) *Ear, Nose, and Throat Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(vi) *Gastroenterology-Urology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(vii) *General and Plastic Surgery Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(viii) *General Hospital and Personal Use Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(ix) *Hematology and Pathology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(x) *Immunology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xi) *Microbiology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xii) *Neurological Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xiii) *Obstetrics-Gynecology Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xiv) *Ophthalmic Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xv) *Orthopedic and Rehabilitation Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(xvi) *Radiologic Devices Panel.*

(A) Date established: April 14, 1984.

(B) Function: Reviews and evaluates data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

(2) *Device Good Manufacturing Practice Advisory Committee.*

(i) Date established: August 12, 1976.

(ii) Function: Reviews proposed regulations for good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations on the feasibility and reasonableness of the proposed regulations.

(3) *Technical Electronic Product Radiation Safety Standards Committee.*

(i) Date established: October 18, 1968.

(ii) Function: Advises on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

(e) *National Center for Toxicological Research—Science Advisory Board.*

(1) Date established: June 2, 1973.

(2) Function: Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

(f) *Center for Veterinary Medicine—Veterinary Medicine Advisory Committee.*

(1) Date established: April 24, 1984.

(2) Function: Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

§ 14.125 [Amended]

49. Section 14.125 *Procedures of TEPRSSC* is amended in paragraph (d) by removing "Bureau of Radiological Health" and replacing it with "Center for Devices and Radiological Health".

§ 14.171 [Amended]

50. Section 14.171 *Utilization of an advisory committee on the initiative of FDA* is amended in paragraphs (d) and (e) by removing "bureau" and replacing it with "center" and in paragraph (f) by removing "314.14, 431.71," and replacing it with "314.430".

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

51. The authority citation for 21 CFR Part 16 continues to read as follows:

Authority: Secs. 1 *et seq.*, 2 *et seq.*; 15 U.S.C. 401 *et seq.*, 1451 *et seq.*; secs. 1–10, 1–9, 201 *et seq.*, 24(b), 409(b), 100 *et seq.*, 2 *et seq.*; 21 U.S.C. 41–50, 141–149, 321 *et seq.*, 467f(b), 679(b), 821 *et seq.*, 1031 *et seq.*; secs. 1 *et seq.*, 4; 42 U.S.C. 201 *et seq.*, 257a; 21 CFR 5.10.

§ 16.1 [Amended]

52. Section 16.1 *Scope* is amended in the listings in paragraph (b)(2) by removing "§ 312.1(c)(1)", "§ 312.1(c)(4) and (d)" and "§ 312.9(c)" and replacing it with "§ 312.70", "§§ 312.70(d) and 312.44", and "§ 312.160(b)", respectively.

§ 16.24 [Amended]

53. Section 16.24 *Regulatory hearing required by the act or a regulation* is amended in paragraph (c) by removing "paragraph (c)" and replacing it with "paragraph (d)".

§ 16.40 [Amended]

54. Section 16.40 *Commissioner* is amended by removing "bureau" and replacing it with "center".

§ 16.42 [Amended]

55. Section 16.42 *Presiding officer* is amended in paragraph (c)(1) by removing "bureau" and replacing it with "center" everywhere that it appears.

§ 16.119 [Amended]

56. Section 16.119 *Reconsideration and stay of action* is amended by removing "§ 10.39" and replacing it with "§ 10.35".

PART 20—PUBLIC INFORMATION

57. The authority citation for 21 CFR Part 20 is revised to read as follows:

Authority: Sec. 201 *et seq.*, Pub. L. 717, 52 Stat, 1040 *et seq.*, as amended (21 U.S.C. 321 *et seq.*); sec. 1 *et seq.*, Pub. L. 410, 58 Stat. 682 *et seq.*, as amended (42 U.S.C. 201 *et seq.*); Pub. L. 90–23, 81 Stat. 54–56 as amended by 88 Stat. 1561–1565 (5 U.S.C. 552); 21 CFR 5.10, 5.11.

§ 20.21 [Amended]

58. Section 20.21 *Uniform access to records* is amended in paragraph (b) by removing "§ 7.87(c)(1)" and replacing it with "§ 7.87(c)".

§ 20.42 [Amended]

59. Section 20.42 *Fees* is amended in paragraph (c) by removing "Accounting

Operations Branch" and replacing it with "Accounting Branch".

§ 20.50 [Amended]

60. Section 20.50 *Availability of records at National Technical Information Service* is amended by removing "22152" and replacing it with "22162".

§ 20.81 [Amended]

61. Section 20.81 *Data and information previously disclosed to the public* is amended in paragraph (a)(3) by removing "§ 312.1(a)(3)" and replacing it with "Part 312".

62. Section 20.100 is amended in paragraph (c)(13) by removing "§ 310.505(g)" and replacing it with "§ 291.505(g)", and by revising paragraphs (c)(3), (14), (15), (16), (17), and (21) to read as follows:

§ 20.100 Applicability; cross reference to other regulations.

* * * * *

(c) * * *

(3) Environmental assessments; finding of no significant impact, in § 25.41 of this chapter, or draft and final environmental impact statements, in § 25.42 of this chapter.

* * * * *

(14) Investigational new drug notice, in Part 312 of this chapter.

(15) Labeling for and lists of approved new drug applications, in § 314.430 of this chapter.

(16) Master files for new drug applications, in § 314.420 of this chapter.

(17) New drug application file, in § 314.430 of this chapter.

* * * * *

(21) Antibiotic drug file, in § 314.430 of this chapter.

* * * * *

§ 20.103 [Amended]

63. Section 20.103 *Correspondence* is amended in paragraph (b) by removing "§ 314.14(e)(7)" and replacing it with "§ 314.430".

§ 20.112 [Amended]

64. Section 20.112 *Voluntary drug experience reports submitted by physicians and hospitals* is amended in paragraph (a) by removing "FD-1639" and replacing it with "FDA-1639".

§ 20.117 [Amended]

65. Section 20.117 *New drug information* is amended in paragraph (a)(3) by removing "antibiotic Form 5's, or antibiotic Form 6's" and replacing it with "antibiotic applications" and in paragraph (b) by removing "312.5, and 314.14" and replacing it with "312.130, and 314.430", respectively.

PART 21—PROTECTION OF PRIVACY

66. The authority citation for 21 CFR Part 21 continues to read as follows:

Authority: Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)); 5 U.S.C. 552a; 21 CFR 5.10.

§ 21.45 [Amended]

67. Section 21.45 *Fees* is amended in paragraph (c) by removing "Accounting Operations Branch (HFA-210)" and replacing it with "Accounting Branch (HFA-120)".

§ 21.71 [Amended]

68. Section 21.71 *Disclosure of records in Privacy Act Record Systems; accounting required* is amended in paragraph (e)(4) by removing "(a)(5)" and replacing it with "(a)(7)".

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

69. The authority citation for 21 CFR Part 25 continues to read as follows:

Authority: Sec. 701, 52 Stat. 1055-1056 as amended (21 U.S.C. 371); secs. 351, 354-361, 58 Stat. 702 as amended (42 U.S.C. 262, 263b-264); sec. 102(2)(C), 83 Stat. 853 (42 U.S.C. 4332); 40 CFR Parts 1500-1508; Executive Order 11514 as amended by E.O. 11991; E.O. 12114.

70. Section 25.15 is amended by revising paragraph (c)(18) to read as follows:

§ 25.15 Terminology.

* * * * *

(c) * * *

(18) IND—Investigational New Drug Application.

* * * * *

§ 25.22 [Amended]

71. Section 25.22 *Actions requiring preparation of an environmental assessment* is amended in paragraph (a)(14) by removing "notices of claimed investigational exemption for new drugs" and replacing it with "investigational new drug applications".

§ 25.24 [Amended]

72. Section 25.24 *Categorical exclusions* is amended in paragraph (c)(4) by removing "Notice of Claimed Investigational Exemption for New Drug" and replacing it with "Investigational New Drug Application".

PART 50—PROTECTION OF HUMAN SUBJECTS

73. The authority citation for 21 CFR Part 50 is revised to read as follows:

Authority: Secs. 201, 406, 409, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1040-1042 as amended, 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 974-795 as amended, 90 Stat. 540-560, 562-574 (21 U.S.C. 321, 346, 348, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371(a), 376, and 381); secs. 215, 351, 354-360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 262, 263b-263n); 21 CFR 5.10.

74. Section 50.3 is amended by revising paragraph (b)(6) and in paragraph (b)(11) by removing "Part 430" and replacing it with "§ 314.300 of this chapter" to read as follows:

§ 50.3 Definitions.

* * * * *

(b) * * *

(6) An investigational new drug application, described in Part 312 of this chapter.

* * * * *

PART 56—INSTITUTIONAL REVIEW BOARDS

75. The authority citation for 21 CFR Part 56 is revised to read as follows:

Authority: Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1040-1042 as amended, 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511-518 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 560, 562-574 (21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 371(a), 376, and 381); secs. 215, 301, 351, 354-360F, Pub. L. 410, 58 Stat. 690, 702 as amended 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 241, 262, 263b-263n); 21 CFR 5.10.

76. Section 56.102 is amended by revising paragraph (b)(6) and in paragraph (b)(10) by removing "Part 430" and replacing it with "§ 314.300 of this chapter" to read as follows:

§ 56.102 Definitions.

* * * * *

(b) * * *

(6) An investigational new drug application, described in Part 312 of this chapter.

* * * * *

PART 58—GOOD LABORATORY PRACTICE FOR NONCLINICAL LABORATORY STUDIES

77. The authority citation for 21 CFR Part 58 is revised to read as follows:

Authority: Secs. 306, 402(a), 406, 408, 409, 502, 503, 505, 506, 507, 510, 512-516, 518-520, 701(a), 706, 801, Pub. L. 717, 52 Stat. 1045-1046 as amended, 1049-1053 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 68 Stat. 511-517 as amended, 72 Stat. 1785-1788 as amended, 76 Stat. 794 as amended, 82 Stat. 343-351, 90

Stat. 539–574 (21 U.S.C. 336, 342(a), 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360b–360f, 360h–360j, 371(a), 381); secs. 215, 351, 354–360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173–1186 as amended (42 U.S.C. 216, 262, 263b–263n); 21 CFR 5.11.

78. Section 58.3 is amended by revising paragraph (e)(5) and in paragraph (e)(9) by removing "Part 430" and replacing it with "§ 314.300 of this chapter" to read as follows:

§ 58.3 Definitions.

* * * * *

(e) * * *

(5) An "investigational new drug application," described in Part 312 of this chapter.

* * * * *

§ 58.195 [Amended]

79. Section 58.195 *Retention of records* is amended in paragraph (b)(1) by removing "notices of claimed investigational exemption for new drugs" and replacing it with "investigational new drug applications".

Dated: February 23, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–4959 Filed 3–2–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR 646

Railroads; Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document centralizes the authority at the part level in Part 646 rather than disperse the authority citations at the subpart level.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael J. Laska, Office of the Chief Counsel, 202–366–1383. Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA hereby amends Part 646 of Title 23, Code of Federal Regulations, by revising the authority citation to read as follows and all other authority citations which appear throughout Part 646 are removed:

Authority: 23 U.S.C. 109(e), 120(d), 130, 315 and 405; 49 CFR 1.48(b).

Issued on: February 28, 1989.

Michael J. Laska,

Deputy Assistant Chief Counsel for Legislation and Regulations, Federal Highway Administration.

[FR Doc. 89–4988 Filed 3–2–89; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R–89–1422; FR –2545]

Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes changes in the "special purpose modernization" provisions of the existing Comprehensive Improvement Assistance Program (CIAP) regulation (24 CFR Part 968) to implement statutory amendments contained in section 120 of the Housing and Community Development Act of 1987 (1987 Act), along with certain funding provisions to back up the statutory policy, as follows:

- Revision of the definition of "special purpose modernization" to expand the types of physical improvements which may be funded under a special purpose modernization program, subject to a HUD determination that the improvements are necessary and sufficient to extend substantially the useful life of the project, beyond that which it would have if such improvements were not made;
- Revision of certain public housing agency (PHA) planning provisions (five-year plan and project needs assessments), as appropriate to accommodate changes in special purpose modernization;
- Authority for HUD to establish annual funding set-asides for special purpose modernization, to assure that special purpose needs are appropriately addressed;
- Where a project has not been comprehensively modernized, a one-time limitation on use of the special purpose approach for work related to major equipment systems or structural elements, upgrading security, and reduction of vacant, substandard units; and
- For work related to the reduction of vacant, substandard units, limitations on the extent of the physical improvements that may be funded under the special modernization approach.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy S. Chisholm, Director, Policy Staff, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6640. A telecommunications device for deaf persons (TDD) is available at (202) 245–0850. (These are not toll-feee telephone numbers.)

SUPPLEMENTARY INFORMATION: On October 19, 1988, the Department published a notice of proposed rulemaking (53 FR 40903) to amend the "special purpose modernization" provisions of its existing regulation (24 CFR Part 968) governing the Comprehensive Improvement Assistance Program (CIAP) for public housing. After a 30-day comment period and review of the public comments received, the Department is now issuing a final rule that incorporates certain revisions in response to the public comments.

These regulatory changes reflect amendments to section 14 of the United States Housing Act of 1937 (1937 Act), as made by section 120 of the Housing and Community Development Act of 1987 (1987 Act). The changes are limited to provisions on special purpose modernization and do not modify the essential structure or objectives of the CIAP regulation. All other program requirements continue to apply to special purpose modernization, except as stated in the amended regulation. For example, special purpose modernization continues to be limited to physical improvements, and such improvements are subject to the existing *Public Housing Modernization Standards Handbook*, 7485.2 REV–1.

The Department wishes to emphasize its support for all forms of tenant involvement in the modernization process. Those forms may range from tenant participation and consultation in the development of a modernization application to actual resident management of a project. This involvement allows residents to have a voice in improving the livability of their environment. Encouraging resident management and homeownership, wherever possible, gives residents the ability to make decisions about their own lives, and to secure a better life for themselves and their families.

The Department received 10 comments on the proposed rule. Seven of these were from PHAs, two from national public housing associations, and one from an association representing retired people. Below is a discussion of each of the issues raised by the commenters, indicating the changes made in the final rule as a result of the public comments.

1. Definition of Special Purpose Modernization (Section 968.3)

Although none of the commenters expressed substantive objections to the revised definition of "special purpose modernization", under § 968.3, several recommended clarifying changes. The final rule adopts some of these recommendations, by revisions to the introductory clause of the definition.

In response to recommendations from several commenters, the "necessary and sufficient" condition has been revised to read as follows: "subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the project, *beyond that which it would have if such improvements did not occur* * * *" (emphasis supplied). The quoted language before the comma is the same as in the proposed rule, the key phrase—"necessary and sufficient to extend substantially the useful life of the project"—being the *verbatim* statutory condition. The emphasized language has been added for the sake of clarification, using the wording of identical recommendations from several commenters.

One commenter suggested that, although there should be room for judgment in implementing the "necessary and sufficient" condition, the term "extend substantially" should be defined. The Department believes that the added phrase quoted above provides appropriate guidance for the kind of judgment which the statute requires on this point.

Another clarification is the parenthetical phrase "(examples cited in each category are for illustration only)", which has been inserted at the end of the introductory clause of the § 986.3 definition. While approving of the examples of special purpose work items cited in paragraphs (1) and (2) of the proposed definition, some commenters expressed concern that the examples might be construed as being the only eligible improvements permitted under those two paragraphs. As the quoted insertion makes clear, these examples do not exclude any other work items that meet the primary definitional terms.

One commenter recommended that paragraph (3) of the definition—regarding work items to increase accessibility for elderly and handicapped families—be revised to state that the addition, replacement or rehabilition of facilities necessary for the provision of supportive special services are eligible work items. Accessibility needs for non-dwelling as well as dwelling facilities may be addressed by a special purpose program, but the Department believes that no change from the proposed rule is required to make that clear.

The 1987 Act speaks of "physical improvements to increase *accessibility* for elderly and handicapped families" (emphasis supplied). Consequently, improvements to tenant services facilities, or to other dwelling or non-dwelling facilities, could be funded under this type of special purpose modernization only if justified on grounds of accessibility. The Department believes that, with regard to tenant services facilities or other dwelling or non-dwelling facilities, the primary intent of the statute is the retrofitting of existing facilities to "increase accessibility", and not to add major facilities to accommodate tenant services. (If justified on the basis of project needs and applicable modernization standards, new tenanat services facilities that are not required for accessibility might be added with funding provided under a comprehensive program.)

Accessibility needs, including those related to facilities for tenant services or other non-dwelling facilities, are subject to the same standards under either comprehensive or special purpose modernization, and the changes made by this final rule are not intended to imply any change in those standards. The final rule refers to the general standards for accessibility for programs administered by HUD (24 CFR Part 8; see especially 24 CFR 8.21, Non-housing facilities. See also the *Public Housing Modernization Standards Handbook,* 7485.2 REV-1, paragraph 2-8B, Community Services Facilities.)

One commenter recommended that the proposed definition be revised to state that conditions which qualify work for emergency modernization must govern over categorical definitions. The commenter pointed out that, while the repair of an elevator might come within the category of "major systems" under the special purpose definition, the elevator's condition at the time of application may require that its repair be classified and funded as emergency modernization, rather than as special purpose.

The Department believes that this point is already covered by the § 968.3 definition of "emergency modernization" and by the emphasis, in the application processing procedures of § 968.5, on consideration of the relative urgency of needed improvements. The same types of work items now eligible for special purpose modernization under the various categories listed in § 968.3 could possibly be funded under the emergency—rather than the special purpose—category, where it can be shown that the situation poses a genuine emergency. The amendments to the special purpose provisions are not intended to change the priorities and procedures for addressing emergency needs.

2. Special Purpose Funding Set-Aside (Section 986.5(h)(4))

All comments on the proposed authorization for HUD to establish annual set-asides for special purpose funding (§ 968.5(h)(4)) expressed approval of the general set-aside concept, including the fact that special purpose applications would be ranked separately, so that they would not have to compete with comprehensive modernization for the set-aside funds. The final rule makes no change in this section. The regulation does not specify any fixed amount; it merely authorizes HUD to establish special purpose set-asides, leaving the amounts to be determined and announced by HUD on a year-to-year basis, in the Department's annual CIAP processing notices.

While endorsing the concept of annual set-asides, several commenters objected to the statement, in the preamble of the proposed rule, that for Federal Fiscal Year (FFY) 1989 HUD intended to establish Regional set-asides for special purpose modernization at 20 percent of total funds available. These commenters were of the opinion that a 20 percent set-aside would be insufficient to address special purpose needs.

Subsequent to publication of the proposed rule, the Department issued the FFY 1989 processing notice (PIH 88-45 (PHA), dated December 2, 1988), as necessitated by the time constraints for processing PHA applications for CIAP funds available for the current year. That notice set the FFY 1989 special purpose set-aside at 20 percent of total CIAP funds.

The Department believes that the 20 percent level is appropriate for first-year implemention of the new special purpose provisions, but emphasizes that the percentage in subject to change for

subsequent FFYs, if found justified on the basis of experience in administering the amended regulation. If the full 20 percent is used for special purpose needs, that will leave 80 percent for all other categories—comprehensive, emergency, homeownership and lead-based paint removal modernization. Looking to subsequent years, implementation of the Comprehensive Grant Program (see proposed rule, 53 FR 43648, October 27, 1988) would have a major impact, making the issue irrelevant for PHAs with more than 500 units.

The Department believes this initial set-aside is a reasonable response to the Congressional mandate, considering the 1987 Act's special purpose amendments in the proper perspective of the whole of section 14 of the 1937 Act, as amended. The Department believes that Congress intended that comprehensive modernization remain the primary agenda for the CIAP, subject to greater flexibility to address certain types of physical improvement needs through special purpose modernization. While the congressional directive substantially expands the scope of special purpose modernization, it still characterizes it in terms of exception, limited to physical improvements that are "necessary and sufficient to extend substantially the useful life of the project". As discussed at some length in the preamble to the proposed rule, the intent was to allow special purpose modernization to be used only when there is good reason to proceed with limited physical improvements rather than with a comprehensive program.

While supporting the set-aside concept, two commenters recommended that the Department devise a mechanism to assure that the full amount of the set-aside funding be used for special purpose programs. These commenters recommended that, if the special purpose demands in a particular region should not require the full amount of the Regional Office set-aside, the remaining funds be redistributed for special-purpose use in other high-demand regions.

The final rule does not adopt this recommendation. The total Regional fund allocations are based on relative need, taking account of all modernization categories. The fact that a proposed physical improvement may be eligible for funding under the special purpose category does not necessarily mean that it is more urgent than improvements proposed under other categories. It is likely that the full amounts of all of the FY 1989 Regional set-asides will be required to fund special purpose improvements. If, however, a particular Region should have insufficient special purpose applications of good quality, the remainder of the set-aside funds may be used in the same Region for higher priority applications in other categories.

3. Special Limitations and Project Needs Assessments (Sections 968.10 and 968.5(h)(5))

Most of the commenters objected to the limitations on certain types of special purpose modernization, as stated in § 968.10 of the proposed rule. For improvements related to major equipment systems or structural elements, security, and reduction of vacant, substandard units, it was proposed that a PHA be permitted to obtain special purpose funding only once for a project that has not been comprehensively modernized. PHA eligibility for special purpose modernization funds to reduce the number of vacant, substandard units was limited to work necessary to meet local code requirements and return the units to a condition comparable to that of the occupied units in the same project. In addition, eligibility for special purpose funds to reduce the number of vacant, substandard units would have been limited to PHAs with no more than 30 average turnover vacancy days for units on the market.

The one-time funding limitation (§ 968.10(a)) has been retained, but with a revision to make it clear that it applies only to projects that have not been comprehensively modernized. There is no limit on the number of times special purpose modernization may be used for the same project, after the project has been comprehensively modernized. In any event, this limitation applies only to the three types of improvements specified, and not to the other two types of eligible special purpose improvements—work related to accessibility and energy efficiency.

This one-time limitation reflects the Department's concern about the possible over-use of special purpose modernization, especially for projects that are in need of comprehensive modernization. In the past, so-called "piecemeal" modernization has sometimes made small improvements in projects where comprehensive modernization was needed, and the improvements were quickly overwhelmed by the project's management and social problems, along with unmet needs for more extensive physical improvements.

After the first year of experience in administering the special purpose changes, the Department will review this issue and consider whether any changes might be merited, through a further rulemaking proposal. One possibility would be to exempt from the one-time funding limitation those PHAs which meet the performance standards that have been developed jointly by the Department and the PHAs under the Decontrol Initiative. A major consideration will be the implementation of the Comprehensive Grant Program, which will make this and all other special purpose issues irrelevant for PHAs with more than 500 units.

With regard to the second of the limitations contained in the proposed rule (§ 968.10(b)), the Department has responded to the public comments by removing the language that would have barred a PHA from using the special purpose approach to vacancy reduction if its average turnover vacancy period for units on the market exceeded 30 days. The language limiting the scope of the improvements to vacant, substandard units has been retained.

As a related matter, one commenter objected to the proposed revision on PHA assessment of project needs, under § 968.5(e)(2). This provision requires a comprehensive needs assessment for special purpose applications, except that a specialized needs assessment will suffice where special purpose funding for a particular project is limited to accessibility or energy improvements and there is no evidence of major problems that justify a more thorough examination of total project needs. The commenter recommended that a specialized assessment be permitted for all special purpose applications, even if not limited to accessiblity or energy improvements.

The final rule makes no change in the proposed § 968.5(e)(2). The three types of physical improvements which necessitate a comprehensive needs assessment (improvements related to major equipment systems or structural elements, upgrading security, and reduction of the number of vacant, substandard units) are the same as those which are subject to the one-time funding limitation of § 968.10(a). On the same rationale discussed above in reference to § 968.10(a), needs for these three types of improvements tend to raise the issue of whether they will be sufficient of themselves to "extend substantially the useful life of the project", so that the safeguard of a comprehensive needs assessment is justified whenever a special purpose application involves any of the three.

Other Matters

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule", as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule expands the definition of special purpose modernization, to permit CIAP funding to be used under special purpose modernization programs for the four additional types of physical improvements now authorized by statute, and prescribes certain conditions and procedures for such funding. It will thus tend to give PHAs more flexibility and tend to make their modernization efforts less burdensome.

The rule applies to all PHAs, large and small, which apply for special purpose modernization funds. It will not have a significant economic impact on any HUD assistance recipients, including small PHAs or any other small entities.

This rule was listed as sequence number 1060 under the Office of Public and Indian Housing in the Department's semiannual agenda of regulations published on October 24, 1988 (53 FR 42010) under Executive Order 12291 and the Regulatory Flexibility Act.

Information collection requirements under Part 968, as amended by this rule, are no more burdensome than those contained in the provisions of the regulation that were in effect prior to these special purpose amendments.

This rule has been developed in accordance with Executive Order 12612, Federalism, and determined not to have substantial direct effects on the States (including their political subdivisions), or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of governments. The changes are consistent with federalism principles because they afford PHAs greater flexibility in their local modernization programs.

This rule has been developed in accordance with Executive Order 12606, The Family. It does not have a potentially significant impact on family formation, maintenance and general well-being. Wise use by the PHAs of the added flexibility afforded them by this rule will have a beneficial effect on the availability of public housing for lower-income families.

(The Catalog of Domestic Assistance numbers for the programs affected by this rule are 14.850, 14.851, and 14.852.)

List of Subjects in 24 CFR Part 968

Loan programs: housing and community development, Public housing, Reporting and recordkeeping requirements, Grant programs: housing and community development, Indians.

Accordingly, 24 CFR Part 968 is amended as follows:

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

1. The authority citation for Part 968 continues to read as follows:

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d, 14371; sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 968.3, the definition of "Special purpose modernization" is revised to read as follows:

§ 968.3 Definitions.

* * * * *

"Special purpose modernization" means a modernization program for a project that is limited to any one or more of the following types of physical improvements otherwise eligible for CIAP funding under this part, subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the project, beyond that which it would have if such improvements were not made (examples cited in each category are for illustration only):

(1) Physical improvements to replace or repair major equipment systems (such as elevators and heating, cooling, electrical, and water and sewer systems) or structural elements (such as roofs, walls and foundations);

(2) Physical improvements to upgrade security, such as installation of additional lighting, security screens on windows, better locks, or design changes to enhance security (excluding non-physical improvements, such as security staffing and services);

(3) Physical improvements to increase accessibility for elderly and handicapped families, according to the applicable standards of 24 CFR Part 8;

(4) Physical improvements to reduce the number of units which are vacant and substandard, including any improvements necessary to meet local code requirements and return the units to occupancy; and

(5) Cost-effective physical improvements to increase the energy efficiency of the project.

3. In § 968.5, the references in paragraphs (h)(2)(iii) and (h)(3) to "special purpose" and the commas immediately preceding those words are removed, paragraphs (c)(1) and (e)(2) are revised, and a new paragraph (h)(4) is added as follows:

§ 968.5 Procedures for obtaining approval of a modernization program.

* * * * *

(c) * * *

(1) A five-year plan, which is the PHA's initial comprehensive assessment of the modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects for all categories of modernization authorized by this part. The plan shall include a gross estimate of the modernization funds to be requested for each project.

* * * * *

(e) * * *

(2) Completing an assessment of the needs of each project for which the PHA is requesting funds in the current FFY. The PHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each project for which the PHA is requesting comprehensive or special purpose modernization; except that if the request for a particular project is limited to physical improvements to increase accessibility for elderly and handicapped families and to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the project has major problems that justify a comprehensive assessment. An assessment of

specialized physical improvement needs will be completed for each project for which the PHA is requesting emergency, homeownership or lead-based paint modernization.

* * * * *

(h) * * *

(4) HUD may set aside for special purpose modernization a portion of the total modernization funds available for any FFY, as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed.

* * * * *

§ 968.9 [Amended]

4. In § 968.9, paragraph (h)(4) is amended by revising the reference to "§ 968.19" to read "§ 968.20".

§§ 968.10 through 968.19 [Redesignated as §§ 968.11 through 968.20]

5. Sections 968.10 through 968.19 are redesignated as §§ 968.11 through 968.20, respectively, and a new § 968.10 is added, to read as follows:

§ 968.10 Additional limitations for special purpose modernization.

(a) For each of the three types of special purpose modernization relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units, a PHA may obtain special purpose modernization funding only once for a project that has not been comprehensively modernized. Subsequent funding for the same project for any additional physical improvements of these types may be provided only as a part of a program which addresses all of the physical and management improvement needs of the project under a comprehensive modernization program. This limitation does not apply to a project which has been comprehensively modernized.

(b) Special purpose modernization to reduce the number of vacant, substandard units will be limited to physical improvements which are necessary to meet local code requirements and return such units to a condition that is comparable to the condition of occupied units in the same project.

§ 968.4 [Amended]

6. In § 968.4(a), the reference to "§ 968.18" is revised to refer to "§ 968.19".

§ 968.8 [Amended]

7. In § 968.8(b)(3), the reference to "§ 968.10" is revised to refer to "§ 968.11".

§ 968.14 [Amended]

8. In newly redesignated § 968.14 the reference in paragraph (b) to "§ 968.14" is revised to refer to "§ 968.15".

Dated: February 21, 1989.

Thomas Sherman,

Acting General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-4483 Filed 3-2-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 64

[Order No. 1326-89]

Judicial Administration; Designation of Officers and Employees of The United States for Coverage Under Section 1114 of Title 18 of the United States Code

AGENCY: U.S. Department of Justice.

ACTION: Final rule.

SUMMARY: Part 64 of Title 28, Code of Federal Regulations, designates categories of federal officers and employees who, in addition to those already designated by statute, warrant the protective coverage of federal criminal law. This assures federal jurisdiction to prosecute the killing, attempted killing, kidnapping, forcible assault, intimidation or interference with any of the federal officers or employees designated by this regulation while they are engaged in or on account of the performance of their official duties. This order amends 28 CFR Part 64 by adding employees of the Social Security Administration assigned to Administration field offices, hearing offices, and field assessment offices; United States Information Agency Security Office Special Agents; and employees of the United States Nuclear Regulatory Commission who are engaged in activities related to the review of license applications and license amendments to the list of covered federal officers and employees set forth in 28 CFR 64.2.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Roger B. Cubbage, Deputy Chief, Martin C. Carlson, Senior Legal Advisor, or Donald B. Nicholson, Attorney, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, Washington, DC. 20530 (202-786-4827).

SUPPLEMENTARY INFORMATION: Part K of Chapter X of the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, Title II, section 1012, 98 Stat. 1976, 2142 (1984) amended 18 U.S.C. 1114, which prohibits the killing of designated federal employees, to authorize the Attorney General to add by regulation other federal personnel who will be protected by this section. The categories of federal officers and employees covered by section 1114 are, by incorporation, also protected, while engaged in or on account of the performance of their official duties, from a conspiracy to kill, 18 U.S.C. 1117; kidnapping, 18 U.S.C. 1201(a)(5); forcible assault, interference, or intimidation, 18 U.S.C. 111; and threat of assault, kidnap or murder with intent to impede or intimidate, 18 U.S.C. 115. Consistent with the legislative history and purpose of section 1114, this protective coverage has been extended by 28 CFR Part 64 to those federal officers and employees whose jobs involve inspection, investigative or other law enforcement responsibilities or whose work involves a substantial degree of physical danger from the public that may not be adequately addressed by available state or local law enforcement resources.

Field employees of the Social Security Administration have been assaulted and threatened by visitors to field offices, and a number of Nuclear Regulatory Commission personnel involved in license hearings and adjudications have received threats. Therefore, their coverage under these regulations is appropriate. The former are added as new subsection (v) of 28 CFR 64.2, and the latter by amendment of subsection (m). United States Information Agency Security Officer Special Agents perform a wide variety of investigative and law enforcement functions and have on occasion been threatened. Their inclusion within these regulations is appropriate, and they have been added as new subsection (w).

Because the material contained herein involves only three federal agencies and is thus of limited and not general effect, the Department of Justice finds inapplicable the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

The Department of Justice has determined that this Order is not a major rule for purposes of either Executive Order 12291, or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

List of Subjects in 28 CFR Part 64

Crime, Government employees, and Law enforcement officers.

By virtue of the authority vested in me by 28 U.S.C. 509, 5 U.S.C. 301, and 18 U.S.C. 1114, Part 64 of Chapter I of Title 28, Code of Federal Regulations, is hereby amended as follows:

1. The authority for Part 64 continues to read as follows:

Authority: 18 U.S.C. 1114, 28 U.S.C. 509, 5 U.S.C. 301.

§ 64.2 [Amended]

2. Section 64.2 is amended by revising paragraph (m), to read as follows:

(m) Officers and employees of the United States Nuclear Regulatory Commission assigned to perform or to assist in performing investigative, inspection, or law enforcement functions; or who are engaged in activities related to the review of license applications and license amendments;

3. Section 64.2 is amended by adding a new paragraph (v), to read as follows:

(v) Employees of the Social Security Administration assigned to Administration field offices, hearing officers, and field assessment officers; and

4. Section 64.2 is amended by adding a new paragraph (w), to read as follows:

(w) United States Information Agency Security Office Special Agents.

5. Section 64.2 is amended by removing the final word, "and", from paragraph (t) and by removing the period at the end of paragraph (u) and inserting in its place a semicolon.

Date: February 24, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-5044 Filed 3-2-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards; Approval of Supplements to the Wyoming State Plan

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Approval of supplements to the Wyoming State Plan.

SUMMARY: This document gives notice of Federal approval of amendments to the Wyoming Occupational Health and Safety Act and to the Wyoming Rules of Practice and Procedure. The amendments to the Act and rules involve contested cases, hearings, discrimination, petitions for modification of abatement, and other technical changes.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer affairs, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

The Wyoming Occupational Health and Safety (WOHS) Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on May 3, 1974 (39 FR 15394). A determination of final approval was made under section 18(e) of the Act on June 27, 1985 (50 FR 28770). Part 1953 of this chapter provides procedures for the review and approval of State plan change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

Description of Supplements

Wyoming Occupational Health and Safety Act

The State submitted a State plan change supplement concerning amendments to its Occupational Health and Safety Act (Laws 1983, Ch. 172) in April 1984. The amendments to the Wyoming Act are as follows: modifying the powers and duties of the Occupational Health and Safety Commission; abolishing the power of the review board and the Commission to hear contested cases and providing for an independent hearing officer; providing a procedure for hearings and appeals whereby the Commission makes final administrative decisions in contested cases and the party adversely affected may appeal to the District Court in the county where the violation allegedly occurred; providing for enforcement of the commission's decisions; requiring written notification to employers of their right to refuse entry; creating the Department of Occupational Health and Safety; and, making penalties for posting violations discretionary.

The amendment to the State law which clarifies that penalties for posting violations are discretionary differs from the Federal law in that the Federal law provides mandatory penalties for posting violations. However, the State's guidelines on exercising discretion in proposing penalties for posting violations, as set forth in the Wyoming Operations Manual, require mandatory penalties to be calculated and assessed for the same categories of posting violations as are required pursuant to OSHA policy and procedures. This State provision is being approved subject to continued monitoring and if monitoring reveals less effective application of penalties for posting violations, the State will be required to seek a legislative change.

Wyoming Rules of Practice and Procedure

The State submitted amendments to its Rules of Practice and Procedure (Laws 1969, ch. 199, 1.) on May 17, 1983, and subsequent revisions on October 27, 1983, December 13, 1983, and May 22, 1984. The Rules of Practice and Procedure (change 1) were revised because of changes made to the Wyoming Occupational Health and Safety Act in the areas of contested cases, hearings, discrimination, petitions for modification of abatement, and other technical changes. The amendments are as follows:

(1) Chapters I—Introduction, II—Safety Rules and Regulations and III—Variances, have been revised to make them consistent with technical statutory changes made in the Act such as: statutory recodification; clarification of definitions for deminimis violation and party; changing terminology ("failure to abate" to "failure to correct"); changing "Assistant Administrator" to "Department" to more appropriately assign the responsibility for research to the Department of Occupational Health and Safety rather than a position; and, clarifying the requirements for temporary and permanent variances.

(2) Chapter IV—Enforcement, Sections 2.h.(1) through (3) and 2M. and N., have been revised to clarify the Administrator's authority to approve petitions for modification of abatement. A new section was added providing affected employers, and employees or employee representatives who have filed objections, the right to contest the decision of the Chairman.

(3) Chapter IV—Enforcement, Section 4.a.(5), has been revised to eliminate the Review Board and to provide for a hearing officer to hear contested cases. The hearing officer recommends a decision to the Commission for a final administrative decision.

(4) Chapter IV—Enforcement, Section 7.b.(1)(c), has been revised to clarify the Agency's procedure for processing allegations of discrimination, including compensation for the employees for actual harm suffered as a result of discrimination and the Administrator's

responsibility to issue a notice of violation when discrimination is found.

(5) Chapter IX—Hearings has been revised to clarify the Agency's burden of proof in contested cases by stating that "The Department shall have the burden of proof in all cases in which Department action is contested" and "the employer shall have the burden to produce evidence of any affirmative defense it may have to any Department action"; to extend authority for all types of hearings allowed by the Act; and, to make the sections consistent with other technical statutory changes made to its Occupational Health and Safety Act.

Location of Plan Supplement for Inspection and Copying

A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1554, Federal Building, 1961 Stout Street, Denver, Colorado 80202; Wyoming Department of Occupational Health and Safety, 604 East 25 Street, Cheyenne, Wyoming 82002; and the OSHA Office of the Director of Federal-State Operations, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210.

Public Participation

Under § 1953.2(c) of this chapter the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with law. The Assistant Secretary finds that the State amendments to its Occupational Health and Safety Act and to its Rules of Practice and Procedure were adopted in accordance with procedural requirements of State law, which included the opportunity for public participation. Good cause is therefore found for approval of this supplement and further public participation would be unnecessary.

Decision

After careful consideration and extensive review by the Regional and National Offices, the Wyoming plan supplements described above are found to be at least as effective as comparable Federal provisions and are hereby approved under Part 1953 of this chapter. However, the amendment to the State law which clarifies that penalties for posting violations are discretionary is approved subject to continued monitoring and if monitoring reveals less effective application of penalties for posting violations, the State will be required to seek a legislative change. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, law enforcement, Occupational Safety and Health.

Signed at Washington, DC this 27th day of February, 1989.

John A. Pendergrass,

Assistant Secretary.

Accordingly, 29 CFR Part 1952 is hereby amended as follows:

PART 1952—[AMENDED]

The authority citation for Part 1952 continues to read:

Authority: Secs. 8, 18, Pub. L. 91–596, 84 Stat. 1608 Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

2. A new § 1952.347 is added to Subpart BB to read as follows:

§ 1952.347 Changes to approved plans.

In accordance with part 1953 of this chapter, the following Wyoming plan changes were approved by the Assistant Secretary:

(a) *Legislation.* (1) The State submitted amendments to its Occupational Health and Safety Act (Laws 1983, Ch. 172), which became effective on May 27, 1983, modifying the powers and duties of the Occupational Health and Safety Commission, abolishing the powers of the review board and Commission to hear contested cases and establishing an independent hearing officer to hear contested cases, providing procedures for hearings and appeals whereby the Commission makes final administrative decisions in contested cases and the party adversely affected may appeal to the District Court, making penalties for posting violations discretionary (although the State guidelines on penalties for posting violations parallel OSHA's and are set forth in the Wyoming Operations Manual), requiring written notification to employers of their right to refuse entry, and creating the Department of Occupational Health and Safety. The Assistant Secretary approved these amendments on February 27, 1989.

(b) *Regulations.* (1) The State submitted amendments to its Rules of Practice and Procedure pertaining to contested cases, hearings, discrimination, and petitions for modification of abatement; and making the regulations consistent with other statutory changes made to its Occupational Health and Safety Act which became effective on September 6, 1984, except amendment to Chapter IV, Enforcement which became effective on March 28, 1985. The Assistant Secretary approved these amendments on February 27, 1989.

[FR Doc. 89–4972 Filed 3–2–89; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[A–1–FRL–3531–1]

Approval and Promulgation of State Air Quality Implementation Plans for Designated Facilities and Pollutants; Negatives Declarations; Connecticut et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Regulations promulgated under the provisions of Section 111(d) of the Clean Air Act require states to submit plans to EPA to control emissions of designated pollutants from designated facilities. Section 62.06 of 40 CFR Part 62 provides that when no such designated facilities exist within a state's boundaries, a letter of "negative declaration" may be submitted in lieu of a control plan. The States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont have submitted negative declarations certifying that certain types of designated facilities are not located within their States. EPA is approving negative declarations of fluoride emissions from primary aluminum reduction plants submitted by the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, and negative declarations of total reduced sulfur from kraft pulp mills submitted by the States of Connecticut, Massachusetts, Rhode Island and Vermont.

EFFECTIVE DATE: This action will become effective May 2, 1989. unless notice is received within 30 days of publication that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the

documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: Pursuant to section 111(d) of the Clean Air Act, EPA promulgated regulations at 40 CFR Part 60, Subpart B, which require States to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a State does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted.

On December 28, 1988, the Connecticut Department of Environmental Protection submitted a letter certifying that there are no existing kraft pulp mills or existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying these negative declarations in 40 CFR 62.1650 and 62.1700, respectively.

On October 3, 1988, the Maine Department of Environmental Protection submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying this negative declaration in 40 CFR 62.4875.

On July 31, 1979, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a letter certifying that there are no existing kraft pulp mills in the State subject to 40 CFR Part 60, Subpart B, and on January 18, 1989, the Massachusetts DEQE submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying these negative declarations in 40 CFR 62.5375 and 62.5400, respectively.

On January 3, 1989, the New Hampshire Air Resources Division submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying this negative declaration in 40 CFR 62.7400.

On July 26, 1979, the Rhode Island Department of Environmental Management (DEM) submitted a letter certifying that there are no existing kraft pulp mills in the State subject to 40 CFR Part 60, Subpart B, and on December 8, 1988, the Rhode Island DEM submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying these negative declarations in 40 CFR 62.9900 and 62.9950, respectively.

On August 2, 1979, the Vermont Department of Environmental Conservation submitted a letter certifying that there are no existing kraft pulp mills in the State subject to 40 CFR Part 60, Subpart B, and on January 4, 1989, the Vermont Agency of Environmental Conservation submitted a letter certifying that there are no existing primary aluminum reduction plants in the State subject to 40 CFR Part 60, Subpart B. EPA is codifying these negative declarations in 40 CFR 62.11400 and 62.11425, respectively.

EPA is codifying these negative declarations without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on May 2, 1989.

Final Action

EPA is approving negative declarations of fluoride emissions from primary aluminum reduction plants submitted by the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, and negative declarations of total reduced sulfur from kraft pulp mills submitted by the States of Connecticut, Massachusetts, Rhode Island and Vermont.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 2, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Aluminum, Fluoride, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements.

Date: February 15, 1989.

Michael R. Deland,

Regional Administrator, Region I.

Title 40 of the Code of Federal Regulations, Part 62, Subparts H, U, W, EE, OO, and UU are amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7642

2. Subpart H is amended by adding an undesignated center headings and §§ 62.1650 and 62.1700 to read as follows:

Subpart H—Connecticut

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.1650 Identification of plan—negative declaration.

The State Department of Environmental Protection submitted on December 28, 1988, a letter certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subpart B of this chapter.

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.1700 Identification of plan—negative declaration.

The State Department of Environmental Protection submitted on December 28, 1988, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

3. Subpart U is amended by adding an undesignated center heading and § 62.4875 to read as follows:

Subpart U—Maine

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.4875 Identification of sources—negative declaration.

The State Department of Environmental Protection submitted on October 3, 1988, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

4. Subpart W is amended by adding an undesignated center headings and §§ 62.5375 and 62.5400 to read as follows:

Subpart W—Massachusetts

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.5375 Identification of plan—negative declaration.

The State Department of Environmental Quality Engineering submitted on July 31, 1979, a letter certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subpart B of this chapter.

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.5400 Identification of plan—negative declaration.

The State Department of Environmental Quality Engineering submitted on January 18, 1989, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

5. Subpart EE is amended by adding an undesignated center heading and § 62.7400 to read as follows:

Subpart EE—New Hampshire

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.7400 Identification of sources—negative declaration.

The State Air Pollution Control Agency submitted on January 3, 1989, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

6. Subpart OO is amended by adding an undesignated center headings and §§ 62.9900 and 62.9950 to read as follows:

Subpart OO—Rhode Island

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.9900 Identification of plan—negative declaration.

The State Department of Environmental Management submitted on July 26, 1979, a letter certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subpart B of this chapter.

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.9950 Identification of plan—negative declaration.

The State Department of Environmental Management submitted on December 8, 1989, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

7. Subpart UU is amended by adding an undesignated center headings and §§ 62.11400 and 62.11425 to read as follows:

Subpart UU—Vermont

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.11400 Identification of plan—negative declaration.

The State Agency of Environmental Conservation submitted on August 2, 1979, a letter certifying that there are no existing kraft pulp mills in the State subject to Part 60, Subject B of this chapter.

Fluoride Emissions From Existing Primary Aluminum Plants

§ 62.11425 Identification of plan—negative declaration.

The State Agency of Environmental Conservation submitted on January 4, 1989, a letter certifying that there are no existing primary aluminum reduction plants in the State subject to Part 60, Subpart B of this chapter.

[FR Doc. 89-4851 Filed 3-2-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 65

[CC Docket 86-497; FCC 89-30]

Common Carrier Services; Amendment of Part 65 to Prescribe Components of the Rate Base and Net Income of Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order on Reconsideration which amends §§ 65.820 and 65.830 of the Rules to: (1) Modify the requirements for the calculation of cash working capital; (2) eliminate the requirement to reduce the rate base for compensated absences; (3) permit the inclusion of the full material and supplies inventory in the rate base; (4) specifically provide for the inclusion of Rural Telephone Bank Stock in the rate base; and (5) make certain minor changes to Part 65. The Commission made these changes because of the need to simplify the rate base and net income determination procedures and to provide clarification as requested in various petitions for reconsideration.

EFFECTIVE DATE: August 28, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Ken Ackerman or John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* adopted January 30, 1989, and released February 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order On Reconsideration

Ten parties filed petitions for reconsideration and/or clarification of the Commission's *Report and Order*, released on December 24, 1987, which prescribed rate base and net income determination principles for all dominant carriers in Part 65 of the Commission's rules. In this *Reconsideration Order* the Commission generally affirms its regulatory procedures. However, the Commission modifies the rate base treatment of certain items and provides clarification for others.

In this *Reconsideration Order* the Commission has modified the requirements for the calculation of cash working capital (CWC). The Commission has decided to permit all Class A carriers to compute their CWC by use of either full lead-lag studies or the Simplified Formula Method outlined in § 65.820(d) of the Commission's rules. For Class B carriers the Commission has decided to permit three options. Class B carriers may elect to follow the Simplified Formula Method, perform a full lead-lag study or determine their CWC using an industry "standard time period" of lead or lag referred to as the Standard Allowance Method. The Standard Allowance Method, as currently set, permits a Class B carrier

to include in the rate base a standard cash working capital allowance equal to 15 days of its cash operating expenses. The Commission has delegated the task of periodically reviewing and revising the standard allowance to the Chief of the Common Carrier Bureau. Although the Commission is permitting carriers the flexibility to choose between methods, carriers must advise the Commission of changes in CWC methods in future tariff filings and their reasons for such change.

The Commission has decided that it will continue the long-standing policy of allowing carriers to add minimum bank balances and working cash advances to their CWC determination. However, the Commission rejected the arguments of those parties who wished to include "non-cash" items, such as depreciation and deferred taxes, in lead-lag studies. This *Reconsideration Order* reaffirms the Commission's *Docket 19129 Phase II Initial Decision* in which the Commission decided that non-cash items such as depreciation and deferred taxes should be excluded from lead-lag studies.

On reconsideration, the Commission agreed with those parties that suggested it would be appropriate and less burdensome to include compensated absences (employee time off with pay, such as vacations and sick leave) in lead-lag studies rather than deducting a portion of accrued compensated absences from the rate base as the Commission's *Report and Order* required. Since compensated absences are analogous to other operating expenses, the Commission decided to allow compensated absences to be included in lead-lag studies.

The Commission decided to permit the inclusion of the full material and supplies inventory in the rate base. Although this approach is a departure from the Commission's previous position, it resolves the inequity of not allowing the carrier to earn a return on the portion of material and supplies that will ultimately be issued for use on long-term construction projects. Since the material and supplies account represents only about 1% of the rate base (based on 1988 Tariff Review Plan Data), the impact of this change on the revenue requirement is approximately four-tenths of one percent.

In this *Reconsideration Order* the Commission also amends Part 65 to make specific reference to the inclusion of Rural Telephone Bank Stock in the rate base and to eliminate any instructions which conflict with the Commission's Part 36 Separations procedures.

The Commission was not convinced by arguments to change the rate base treatment of deferred charges, other deferred credits and deferred taxes. Thus, the rate base treatment for these items remains the same as specified in the *Report and Order*. The Commission also did not agree with BellSouth and Southwestern Bell which sought reconsideration of the use of the prime rate, rather than the overall rate of return, for accruing AFUDC. The Commission did not propose in this proceeding to reconsider the allowable rate to be applied in determining AFUDC and accordingly, did not consider further the carriers' arguments on this issue. Thus, the Commission did not change the current requirement that the compound prime rate of interest be used for accruing AFUDC.

Finally, while the Commission did not change its historically held policy of excluding telecommunications plant adjustments from the rate base unless a carrier can specifically justify the amounts, this *Reconsideration Order* provides clarification as to what is required in seeking approval of plant acquisition adjustments. The Commission has also provided for the grandfathering of existing book acquisition adjustments as suggested by both CP National and the United States Telephone Association. Grandfathering existing acquisition adjustments means that the Commission will continue to recognize within the interstate rate base the interstate portion of plant adjustments that have already been included in the calculation of interstate revenue requirements by the National Exchange Carrier Association or by individual local exchange carriers. Since these existing acquisition adjustments have already been included in earlier rate filings, this process should not have an adverse impact on rates.

Ordering Clauses

Accordingly, it is ordered, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, that the petitions filed by BellSouth, Contel, CP National, GTE, NTCA, OPASTCO, SNET, Southwestern Bell, United and USTA are granted to the extent discussed herein, and otherwise are denied.

It is further ordered, that under the authority contained in sections 4(i), 4(j) 201–205 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) 201–205 and 220, Part 65, Interstate Rate of Return Prescription Procedures and Methodologies, is amended as shown in the Appendix effective six months from publication of the text of the rules in the **Federal Register**, and the rules and policies adopted in this proceeding are prescribed for all dominant carriers.

It is further ordered that the petitions for partial waiver filed by Rochester Telephone on September 21, 1988, the United Telephone System Companies on June 20, 1988 and by Lincoln Telephone and Telegraph Company on May 20, 1988 are dismissed.

List of Subjects in 47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone, Interstate rate of return prescription procedures and methodologies.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 65 of Title 47 of the CFR is amended as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, and 403.

2. Section 65.820 is revised to read as follows:

§ 65.820 Included items.

(a) *Telecommunications Plant.* The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service) and Account 2002 (Property Held for Future Use), net of accumulated depreciation and amortization, and Account 2003 (Telecommunications Plant Under Construction-Short Term), and, to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment), net of accumulated amortization.

(b) *Material and Supplies.* The interstate portion of assets summarized in Account 1220.1 (Material and Supplies).

(c) *Noncurrent Assets.* The interstate portion of Class B Rural Telephone Bank stock contained in Account 1402 (Investment in Nonaffiliated Companies) and the interstate portion of assets summarized in Account 1410 (Other Noncurrent Assets), Account 1438 (Deferred Maintenance and Retirements), and Account 1439 (Deferred Charges) only to the extent that they have been specifically approved by this Commission for inclusion. Otherwise, the amounts in

accounts 1401–1500 shall not be included.

(d) *Cash Working Capital.* The average amount of investor-supplied capital needed to provide funds for a carrier's day-to-day interstate operations. Class A carriers may calculate a cash working capital allowance either by performing a lead-lag study of interstate revenue and expense items or by using the formula set forth in paragraph (e) of this section. Class B carriers, in lieu of performing a lead-lag study or using the formula in paragraph (e) of this section, may calculate the cash working capital allowance using a standard allowance which will be established annually by the Chief, Common Carrier Bureau. When either the lead-lag study or formula method is used to calculate cash working capital, the amount calculated under the study or formula may be increased by minimum bank balances and working cash advances to determine the cash working capital allowance. Once a carrier has selected a method of determining its cash working capital allowance, it shall not change to an optional method from one year to the next without Commission approval.

(e) In lieu of a full lead-lag study, carriers may calculate the cash working capital allowance using the following formula.

(1) Compute the weighted average revenue lag days as follows:

(i) Multiply the average revenue lag days for interstate revenues billed in arrears by the percentage of interstate revenues billed in arrears.

(ii) Multiply the average revenue lag days for interstate revenues billed in advance by the percentage of interstate revenues billed in advance. (Note: a revenue lead should be shown as a negative lag.)

(iii) Add the results of paragraphs (e)(1) (i) and (ii) of this section to determine the weighted average revenue lag days.

(2) Compute the weighted average expense lag days as follows:

(i) Multiply the average lag days for interstate expenses (*i.e.*, cash operating expenses plus interest) paid in arrears by the percentage of interstate expenses paid in arrears.

(ii) Multiply the average lag days for interstate expenses paid in advance by the percentage of interstate expenses paid in advance. (Note: an expense lead should be shown as a negative lag.)

(iii) Add the results of paragraphs (e)(2) (i) and (ii) of this section to determine the weighted average expense lag days.

(3) Compute the weighted net lag days by deducting the weighted average expense lag days from the weighted average revenue lag days.

(4) Compute the percentage of a year represented by the weighted net lag days by dividing the days computed in paragraph (e)(3) of this section by 365 days.

(5) Compute the cash working capital allowance by multiplying the interstate cash operating expenses (*i.e.*, operating expenses minus depreciation and amortization) plus interest by the percentage computed in paragraph (e)(4) of this section.

3. Section 65.830 is revised to read as follows:

§ 65.830 Deducted items.

(a) The following items shall be deducted from the interstate rate base.

(1) The interstate portion of deferred taxes (Accounts 4100 and 4340).

(2) The interstate portion of customer deposits (Account 4040).

(3) The interstate portion of unfunded accrued pension costs (Account 4310).

(4) The interstate portion of other deferred credits (Account 4360) to the extent they arise from the provision of regulated telecommunications services. This shall include deferred gains related to sale-leaseback arrangements.

(b) The interstate portion of deferred taxes, customer deposits and other deferred credits shall be determined as prescribed by 47 CFR Part 36.

(c) The interstate portion of unfunded accrued pension costs shall bear the same proportionate relationship as the interstate/intrastate expenses which give rise to the liability.

[FR Doc. 89–4504 Filed 3–2–89; 8:45 am]
BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 514, 532, and 552

[APD 2800.12 CHGE 62]

Prompt Payment Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), is amended to add section 501.602–3 to implement and supplement the FAR requirements on the ratification of unauthorized commitments; to delete sections 501.675, 501.675–1, 501.675–2 and 501.675–3; to revise section 514.201–2 to refer to the Prompt Payment clause instead of the Payment Due Date clause; to revise part 532 to delete Payment Due Date, Interest on Overdue Payments, and Method of Payment clauses, to add material to supplement the Federal Acquisition Regulation by establishing parameters for modifying constructive acceptance periods in the FAR Prompt Payment clause; to add a Payments by Electronic Funds Transfer clause for contracts when payments may be made by GSA and other agencies and a Prompt Payment clause for acquisitions of leasehold interests in real property and to delete material that is inconsistent with the FAR and OMB Circular A–125; to revise part 552 to delete the existing Payment Due Date clause and provide a new Payments by Electronic Funds Transfer clause for use when payments may be made by GSA and other agencies, to delete the existing Interest on Overdue Payments clause and provide a new Prompt Payment clause for acquisition of leasehold interests in real property, to add an Invoice Requirements clause, and to make other miscellaneous changes for clarity. Acquisition Circular, AC–88–1 is canceled.

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott, Office of GSA Acquisition Policy and Regulations on (202) 523–4765.

SUPPLEMENTARY INFORMATION:

Background

This rule was not published for public comment prior to issuance because it merely implements and supplements a higher level issuance (The Federal Acquisition Regulation) that has previously undergone the public comment process.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The rule simply amends the GSAR as necessary to conform to the FAR as amended by FAC 84–33. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 501, 514, 532 and 552

Government procurement.

1. The authority citation for 48 CFR Parts 501, 514, 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

2. Section 501.602–3 is added to read as follows:

501.602–3 Ratification of unauthorized commitments.

(a) *Authority.* Subject to the limitations and in accordance with the procedures prescribed in FAR 1.602–3, contracting officers may ratify contractual commitments made by employees who do not have the requisite authority to enter into contracts on the Government's behalf if the head of the contracting activity (HCA) has approved the ratification action. The authority to approve ratification actions may not be redelegated.

(b) *Procedures.* (1) Generally, the Government is not bound by agreements or contractual commitments made by persons to whom contracting authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the GSAR, and good acquisition practice. Therefore, such unauthorized contractual commitments should be considered as serious deviations from authorized conduct and consideration given to initiating disciplinary action in appropriate cases. In any instances where suspected irregularities may involve fraud against the Government, or any type of misconduct that might be punishable as a criminal offense, either the employee's supervisor or the contracting officer should immediately report the matter to the Office of the Inspector General with a request for a complete investigation.

(2) The individual who made the unauthorized commitment shall furnish the appropriate contracting director all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to, a statement as to why normal acquisition procedures were not followed, why the contractor was selected and a list of other sources considered, description of work or products, estimated or agreed upon contract price, citation of appropriation available, and a statement regarding the status of the performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the contracting director may waive the requirement that the responsible employee initiate and document the request for ratification, provided that a written determination is made stating that a commitment was in fact made by an employee who shall be identified in the determination.

(3) The appropriate contracting director will assign the request for ratification action to an individual contracting officer for processing. The contracting officer assigned the action will be responsible for preparing a summary statement of facts addressing the limitations in FAR 1.602–3(c) and making a recommendation as to whether the transaction should be ratified and stating the reasons therefore. Advice against express ratification should include a recommendation for other appropriate disposition. When ratification is not permissible due to legal improprieties in the procurement, the contracting officer may recommend that payment be made for services rendered on a quantum meruit basis (the reasonable value of work or labor) or for goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered) provided there is a showing that the Government has received a benefit. (See FAR 1.602–3(d).)

(4) The request for ratification, the information required by paragraph 3, above, and a recommendation for corrective action to preclude recurrence, must be forwarded, through appropriate channels, to the HCA for consideration.

(5) The HCA, upon receipt and review of the complete file, may approve the ratification if determined to be in the Government's best interest, or direct other disposition as appropriate. Acquisitions that have been approved for ratification shall be forwarded to the appropriate contracting officer for issuance of the necessary contractual documents. If the request for ratification is not justified, the HCA shall return the request without approval and provide an explanation for the decision not to approve ratification.

(6) Each HCA shall maintain a separate file containing a copy of each request for approval to ratify an unauthorized contractual commitment. This file shall be made available for review by the Office of Acquisition Policy and the Inspector General.

501.675, 501.675–1, 501.675–2 and 501.674–3 [Removed]

3. Sections 501.675, 501.675–1, 501.675–2 and 501.675–3 are removed.

PART 514—SEALED BIDDING

4. Section 514.201–2 is revised to read as follows:

514.201–2 Part I—The schedule.

All solicitations that contain the Standard Form 33, Solicitation, Offer and Award, should include the following cautionary notice:

"Offerors are reminded that block 13 of the Standard Form 33, Solicitation, Offer and Award, is to be used to offer prompt payment discounts. Payment terms are set forth in the Prompt Payment clause of this solicitation. Offerors are cautioned against inserting any statement in block 13 that indicates that payment is due sooner than the time stipulated in the Prompt Payment clause. **Example:** Inserting "NET 20" in block 13 will cause the offer to be rejected as nonresponsive, because the entry would be contrary to the 30-day payment terms specified in the Prompt Payment clause.

PART 532—CONTRACT FINANCING

5. The table of contents for Part 532 is amended by adding Subpart 532.9.

Subpart 532.9—Prompt Payment

Sec.

6. Section 532.111 is amended by deleting paragraphs (b), (c), (d)(2), (d)(3) and (e), redesignating paragraphs (d)(1), (f) and (g) as paragraphs (b), (c) and (d) and by revising the redesignated paragraph (b) to read as follows:

532.111 Contract clauses.

* * * * *

(b) *Invoice requirements.* The contracting officer shall insert a clause substantially the same as the clause at § 552.232–72, Invoice Requirements, in all solicitations and contracts for supplies, services or the acquisition of leasehold interests in real property that require the submission of invoices for payment.

(c) *Adjusting payments.* The contracting officer shall insert the clause at § 552.232–78, Adjusting Payments, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

(d) *Final payment.* The contracting officer shall insert the clause at § 552.232–79, Final Payment, in all solicitations and contracts for recurring building services expected to exceed the small purchase limitation.

7. Subpart 532.9 is added to read as follows:

Subpart 532.9—Prompt Payment

532.905 Invoice payments.

(a) Before exercising the authority to modify the date for constructive acceptance in subdivision (a)(6)(i) of the basic clause at FAR 52.232–25, Prompt Payment, the contracting officer shall

prepare a justification explaining the reason why it is necessary to specify a longer period. The written justification must be prepared on a case-by-case basis and must be approved by the contracting director. A contracting officer may not specify a constructive acceptance period that exceeds 30 days.

(b) The time specified for constructive acceptance or approval in subdivision (a)(5)(i)(A) and (B) of Alternate I to FAR clause 52.232-25 will be determined by the contracting officer on a case-by-case basis but may not exceed 7 days for construction or architect engineer services, unless a longer period is justified (in writing) and approved by the contracting director. Under no circumstances may a period of more than 30 days be specified.

532.908 Contract clause.

(a) The contracting officer shall insert the clause at § 552.232-70 in solicitations and contracts that include the FAR clause 52.232-25, Alternate II, when payments may be made by GSA and other agencies (e.g., multiple award schedule contracts).

(b) The contracting officer shall insert the clause at § 552.232-71 in solicitations and contracts for the acquisition of leasehold interests in real property. The contracting officer may modify the date for constructive acceptance in subdivision (b)(2) of the basic clause to specify a period longer than 7 calendar days (but not to exceed 30 days) for constructive acceptance, if necessary due to the nature of the services to be received, inspected or accepted by the Government. A written justification for specifying the longer period must be prepared and approved by the contracting director. The contracting officer shall use Alternate I instead of the basic clause if the lease contract does not contain provisions for ordering alterations or overtime utility services. If payment may be made by electronic funds transfer, the contracting officer shall use Alternate II with the basic clause or Alternate I.

532.7000 [Removed]

8. Section 532.7000 is removed.

532.7002 [Removed]

9. Section 532.7002 is removed.

532.7004 [Removed]

10. Section 532.7004 is removed.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 552.232-70 is retitled and revised to read as follows:

552.232-70 Payments by Electronic Funds Transfer.

As prescribed in § 532.908(a), insert the following clause:

Payments by Electronic Funds Transfer (Aug. 1988)

The requirement for submission of a designation of financial institution for receipt of electronic funds transfer payments in paragraph (c) of the "Prompt Payment" clause at (FAR 52.232-25, Alternate II) does not apply to this contract. Instead, the Contractor shall submit its designation of a financial institution for receipt of electronic funds transfer payments with each invoice requesting payment of $25,000 or more (exclusive of any discount for prompt payment). The information for electronic funds transfer is not required by the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information required for electronic funds transfer payments shall be furnished to the Veterans' Administration in accordance with instructions provided by the agency. Other agencies and departments thereof may waive the requirement for designation of a financial institution for receipt of electronic funds transfer payments and for submission of information required to make such payments by including a notice on delivery orders or otherwise notifying the Contractor. (End of Clause)

12. Section 552.232-71 is retitled and revised to read as follows:

552.232-71 Prompt Payment.

As prescribed in § 532.908(b), insert the following clause:

Prompt Payment (Jan. 1989)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made.

(a) *Payment due date.*

(1) *Rental payments.* Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) *Other payments.* The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service.

(b) *Invoice and inspection requirements for payments other than rent.*

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:

(i) Name and address of the Contractor.

(ii) Invoice date.

(iii) Lease number.

(iv) Government's order number or other authorization.

(v) Description, price, and quantity of work or services delivered.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within 7 calendar days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless and until actual acceptance by the Government occurs.

(c) *Interest penalty.*

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made within 15 days after the due date.

(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1, and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.

(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the Disputes clause or for more than 1 year. Interest penalties of less than $1.00 need not be paid.

(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the Disputes clause. (End of Clause)

Alternate I (Jan. 1989)

If Alternate I is used, subparagraph (a)(1) of the basic clause should be designated as paragraph (a) and subparagraph (a)(2) and paragraph (b) should be deleted. Paragraph (c) of the basic clause should be redesignated (b).

Alternate II (Jan. 1989)

If Alternate II is used with the basic clause, add the following paragraph (d). When Alternate I is used this paragraph should be designated (c).

(d) *Electronic funds transfer.* Payments under this contract will be made by the Government either by check or electronic funds transfer (through the Treasury Financial Communications System (TFCS) or the Automated Clearing House (ACH), at the option of the Government. Not later than 14 calendar days after receipt of a notice of award or request from the Contracting Officer or other Government official, the Contractor shall provide information necessary for check payment and/or designate a financial institution for receipt of electronic funds transfer payments. The Contractor shall submit this information to the Contracting Officer or other Government official, as directed.

(1) For payment by check, the Contractor shall provide the full name (where practicable), title, phone number, and complete mailing address of the responsible official(s) to whom check payments are to be sent (must be the same as the remittance address in the lease or the order).

(2) For payment through TFCS, the Contractor shall provide the following information:

(i) Name, address, and telegraphic abbreviation of the financial institution receiving payment (must be the same as the remittance address in the lease or the order).

(ii) The American Bankers Association 9-digit identifying number of the financial institution receiving payment if the institution has access to the Federal Reserve Communications System.

(iii) Payee's account number at the financial institution where funds are to be transferred.

(iv) If the financial institution does not have access to the Federal Reserve Communications System, name, address, and telegraphic abbreviation of the correspondent financial institution through which the financial institution receiving payment obtains electronic funds transfer messages. Provide the telegraphic abbreviation and American Bankers Association identifying number for the correspondent institution.

(3) For payment through ACH, the Contractor shall provide the following information:

(i) Routing transit number of the financial institution receiving payment (same as American Bankers Association identifying number used for TFCS).

(ii) Number of account to which funds are to be deposited.

(iii) Type of depositor account ("C" for checking, "S" for savings).

(iv) If the Contractor is a new enrollee to the ACH system, a "Payment Information Form," TFS 3881, must be completed before payment can be processed.

(4) In the event the Contractor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the required information specified above must be received by the appropriate Government official 30 days prior to the date such change is to become effective.

(5) The document furnishing the information required by this paragraph must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(6) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amount otherwise properly due. (End of Clause)

13. Section 552.232–72 is retitled and revised to read as follows:

552.232–72 Invoice requirements.

As prescribed in § 532.111(b), insert the following clause:

Invoice Requirements (Jan 1989)

(a) Invoices shall be submitted in an original only, unless otherwise specified, to the designated billing office specified in this contract or purchase/delivery order.

(b) Invoices must include the Accounting Control Transaction (ACT) number provided below or on the purchase/delivery order.

Act Number (Contracting Officer Insert Number)

(c) In addition to the requirement for a proper invoice specified in the Prompt Payment clause of this contract or purchase/delivery order, the following information or documentation must be submitted with each invoice:

(Contracting Office List Additional Requirements)

(End of Clause)

552.232–73 [Reserved]

14. Section 552.232–73 is deleted and reserved.

15. Section 552.232–75 is amended by revising the introductory paragraph to read as follows:

552.232–75 Payments to contractor.

As prescribed in § 532.7003(a), insert the following clause:

* * * * *

16. Section 552.232–76 is amended by revising the introductory paragraph to read as follows:

552.232–76 Certification of payment.

As prescribed in § 552.7003(b), insert the following clause:

* * * * *

17. Section 552.232–78 is amended by revising the introductory paragraph to read as follows:

§552.232–78 Adjusting payments.

As prescribed in § 532.111(c), insert the following clause:

* * * * *

18. Section 552.232–79 is amended by revising the introductory paragraph to read as follows:

552.232–79 Final payments.

As prescribed in § 532.111(d), insert the following clause:

* * * * *

Dated: February 14, 1989.

Richard H. Hope, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 89–4944 Filed 3–2–89; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: The Commission is adopting regulations that allow electronic tariff filing as an alternative to printed tariffs. To accomplish this, the Commission is replacing its current regulations, which were drafted with only paper tariffs in mind, with regulations that are neutral with regard to the medium by which tariff information is transmitted both to the Commission and to the public. The detailed instructions of the former regulations will be replaced with brief tariff standards that require that tariffs be filed in such a way that rate and service information is described accurately and fully for use both at the time of filing and in the future. The Commission's final rule was published in the **Federal Register** on February 10, 1989 at 54 FR 6403. This notice makes certain editorial corrections to Part 1314 of the final rule.

DATE: The rule will become effective March 13, 1989.

FOR FURTHER INFORMATION CONTACT: Charles E. Langyher, (202) 275–7739, or Lawrence C. Herzig, (202) 275–7358 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1314

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, Railroads, Tariffs.

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1314 continues to read as follows:

Authority: 49 U.S.C. 10321, 10708, 10761 and 10762; 5 U.S.C. 553.

§ 1314.5 [Corrected]

2. In § 1314.5(b), in the chart under Water—Passenger, the figure in the Reduced column is correctly added to read "30" not "3".

§ 1314.6 [Corrected]

3. In § 1314.6(b) the name of the Tariff Publishing Officer listed for Railroads is correctly added to read: "Mr. S.R. Rodgers" not "W.J. Hardin".

§ 1314.8 [Corrected]

4. In § 1314.8(b) number two under Examples is correctly added to read as follows:

(2) Joint motor/water commodity rates in containerized service between interior points in the United States and ports in Puerto Rico and Hawaii; and governing rules.

Noreta R. McGee,

Secretary.

[FR Doc. 89-5015 Filed 3-2-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 41
Friday, March 3, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Shiplot Inspection Plan (Cu-Sum)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Grain Inspection Service (FGIS) published in the **Federal Register** on Monday, January 23, 1989, as corrected on Friday, January 27, 1989, a proposed rule on revising the Shiplot Inspection Plan (Cu-Sum). FGIS is extending the comment period to provide interested persons with additional time in which to prepare comments on the proposed rule.

DATE: Comments must be submitted on or before May 23, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC. 20090–6454. Alternatively, telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Lewis Lebakken, Jr., TLX: 7607351, ANS:FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447–4628.

All comments received will be made available for public inspection at room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: FGIS published in the **Federal Register** on January 23, 1989 (54 FR 3050, FR Doc. 89–1194) as corrected on January 27, 1989 (54 FR 4109) a proposal to revise the current shiplot inspection plan (Cu-Sum). The proposed rule was to revise §§ 800.86, 800.129, and 800.139 of the regulations concerning the inspection of shiplot, unit train, and lash barge grain in single lots; and to organize the sections into a more logical order, clarify and remove unnecessary language, and remove provisions that are no longer needed.

The proposed rule provided for a comment period to obtain public views and comments on the revisions. Comments were to be submitted on or before March 24, 1989. The Grain Elevator and Processing Society (GEAPS), North American Export Grain Association (NAEGA), Bunge Corporation, Archer Daniels Midland Company and Union Equity Co-operative Exchange submitted written requests to extend the comment period. They indicated additional time is needed to review the proposal. GEAPS, NAEGA, and the Bunge Corporation further indicated the grain quality report being developed by the Office of Technology Assessment (OTA) should be considered after it is released to the public before commenting on the proposed rule because the final report may influence their comments.

The intent of the proposed rule was to obtain public views and comments on the revisions. It has been determined that an extension of time to allow additional public input will prove beneficial. Commentors will have additional time to consider the OTA report; foreign buyers will have more time to respond; and additional time may facilitate the development of effective alternative recommendations by industry. Therefore, the comment period is hereby extended until May 23, 1989.

(Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*))

Dated: March 1, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–5076 Filed 3–2–89; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF JUSTICE

Immigration And Naturalization Service

8 CFR Part 210a

[INS No. 1201–89]

Admission or Adjustment of Status of Replenishment Agricultural Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule adds a new Part 210a of 8 CFR, to conform with the new section 210A of the Immigration and Nationality Act, established by the Immigration Reform and Congrol Act of 1986 (IRCA), Pub. L. 99–603. The purpose of this proposed rule is to set forth the criteria and procedures to be used to admit or adjust the status of replenishment agricultural workers for temporary residence, and to address the rights and obligations of aliens admitted or adjusted under this section.

DATES: Comments must be received on or before April 3, 1989.

ADDRESSES: Written comments should be mailed in triplicate to the Deputy Assistant Commissioner, Special Agricultural Worker Programs, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Worker Programs (SAW), 202–786–3658.

SUPPLEMENTARY INFORMATION: Section 210 of the Immigration and Nationality Act, added by section 302 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, provides lawful residence in the United States for "special agricultural workers" (SAWs). Aliens adjusted under this section are not required to remain in agricultural work upon acquiring lawful status. To address the concerns of growers that labor shortages might result as alien

farm workers granted status under the SAW program retired or left to go into non-agricultural work, Congress also added section 210A to the Act. Unlike SAWs, these replenishment agricultural workers (RAWs) are obligated to perform seasonal agricultural services in each of the first three years after having been accorded temporary residence. RAWs who fulfill this condition may be given the status of permanent resident. A RAW who fails to perform the requisite seasonal agricultural services is deportable. RAWs who desire to become citizens of the United States are obligated to perform seasonal agricultural services in each of two additional years.

Section 210A(c) of the Act directs the Attorney General to provide for the admission or adjustment of aliens to lawful temporary resident status in order to meet a shortage of workers to perform seasonal agricultural services. The number of aliens admitted or adjusted each fiscal year under the provisions of section 210A(c), which is referred to as the "shortage number", is determined jointly by the Secretaries of Labor and Agriculture with the Bureau of the Census from data collected during the prior fiscal year. If the determination is made that there will be no shortage of workers in any year, no RAW shall be admitted or adjusted in that year unless the Emergency Procedure for Increase in Shortage Number at section 210A(a)(7) is implemented.

On August 15, 1988, a notice of availability for public comment of a preliminary working draft of regulations to implement section 210A(c) was published in the **Federal Register** at 53 FR 30685. The Service gratefully acknowledges the many comments it received from farm worker and grower representatives, members of Congress and others. The knowlege and expertise imparted by the commentors were of considerable help to the Service in refining its views and many of the suggestions were adopted in drafting this proposal.

These proposed regulations describe a procedure to be employed for the admission or adjustment of RAWs during fiscal year 1990, if required, and the standards and procedures governing all other aspects of the RAW program. Procedures for the admission or adjustment of RAWs during fiscal years 1991 through 1993 will be promulgated by regulation at a later date.

The basic eligibility criteria for RAW status for fiscal year 1990 shall be: (1) A minimum age of 18 by October 1, 1989; (2) the performance of at least 20 man days of agricultural work in the United States in any 12 consecutive months during the period May 1, 1985 through November 30, 1988; (3) admissibility to the United States as an immigrant; and (4) certification of ability and intent to perform the seasonal agricultural services required to maintain RAW status. Aliens who have entered the United States illegally subsequent to November 6, 1986, will not be eligible. Priority consideration shall be given to aliens who meet these criteria and who are spouses or unmarried sons or daughters of aliens legalized under IRCA.

The selection process shall proceed in two stages: (1) The establishment of a list of potentially eligible aliens who will be invited to petition for RAW status; and (2) the petition process during which eligibility will be determined and the admission or adjustment of the alien accomplished.

The shortage number for fiscal year 1990 may not be known until late in fiscal year 1989 and it is possible that there will be no shortage number. The regulations are designed, therefore, to minimize the expenditure of public funds in preparation for the admission or adjustment of RAWs prior to information that there will be a shortage number. In order that registration procedures may proceed prior to the beginning of fiscal year 1990, the Service may commence action based on a formal estimate from the Departments of Agriculture and Labor as to the probable size of a shortage number, including a reasonable margin for a possible emergency increase prior to October 1, 1989.

For reasons of economy and to avoid the creation of unwarranted expectations that would result from a registration out of proportion to the shortage number, registration standards will be variable and geared to the size of the shortage number as follows: (1) Immediately after the announcement or preliminary estimate of a shortage number by the Secretaries of the Departments of Agriculture and Labor, the INS will establish a list of aliens whose applications for SAW status were denied but who meet the eligibility criteria for RAW status. Age and qualifying work experience will be determined from information already in possession of INS. Qualified registrants from this list will be the first to be admitted or adjusted to RAW status. If the number of persons on this list is larger than the shortage number, there may be no need to activate additional procedures for the admission or adjustment of RAWs. If, however, it appears likely that the number of aliens on this list will not meet the shortage number, then the INS will implement a procedure in which additional eligible aliens may register their interest in petitioning for RAW status. (2) if the difference between the anticipated number of aliens in the first group and the shortage number is less than 50,000, registration will be limited to eligible aliens residing in the United States whose qualifying work was in seasonal agricultural services; (3) if the difference is between 50,000 and 200,000, registration will be limited to eligible aliens residing in the United States whose qualifying experience was in any agricultural employment; and (4) if the difference is greater than 200,000, registration will be open to any eligible alien, including aliens outside the United States, whose qualifying work in the United States was in any agricultural employment.

All timely received registration forms will be randomly ordered, with aliens claiming priority consideration based on family relationship to an IRCA legalized alien placed first on the registration list. If a shortage number is determined, aliens in the first group will be invited to petition for admission or adjustment to RAW status in the order that they appear on the registration list until the shortage number is met. If the shortage number is not met by the first group, the appropriate additional registration procedure will be implemented. All registrants will mail their registration forms (I-807) to an INS Central Processing Facility (CPF). Aliens claiming immediate family relationship to an alien legalized under IRCA will be given priority consideration. Registered aliens will be invited to petition for RAW status until the shortage number is met. Additional registrants will be invited to petition as necessary to meet any emergency increase in the shortage number.

It is in the interest of agricultural employers to remain in contact with undocumented former workers so that they may contact these workers with necessary information in the event that there is a registration.

The Service also wishes to note here that it is important for employers to understand that SAWs and RAWs are legal resident aliens and are to be treated as such for tax purposes. They should not be confused with nonimmigrant temporary workers admitted under the H-2A program.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal

Assessment in accordance with Executive Order 12612.

This rule contains information collection requirements that have been submitted to the Office of Management and Budget for clearance under the provisions of the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 210a

Aliens, Temporary resident status, Reporting and recordkeeping requirements, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended by adding a new Part 210a to read as follows:

PART 210a—REPLENISHMENT AGRICULTURAL WORKERS

Sec.

Authority: 8 U.S.C. 1103; 8 CFR Part 2.

§ 210a.1 Definition of terms used in this part.

(a) *Act.* The Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99-603.

(b) *ADIT.* Alien Documentation, Identification and Telecommunications card, Form I-89. Used to collect key data concerning an alien. When processed together with an alien's photographs, fingerprints and signature, this form becomes the source document for generation of Form I-551 Alien Registration Receipt Card.

(c) *Agricultural employment.* The term "agricultural employment" includes any employment:

(1) On a farm in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) By a farm operator in connection with operating or maintaining the farm and its tools and equipment, or with salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvest of any agricultural commodity or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) By the operator(s) of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, but does not include service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or service not in the course of the employer's trade or business or domestic service in a private home of the employer.

(d) *Farm.* The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(e) *Agriculture.* The term "agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities as defined as agricultural commodities in section 1141j(g) of Title 12), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

(f) *Application under IRCA.* The term "application under IRCA" means an application filed by any alien with the Immigration and Naturalization Service under sections 245a (general amnesty) and 210 (SAWs) of the Immigration and Nationality Act and section 202 (Cuban/Haitian adjustees) of the Immigration Reform and Control Act of 1986 (IRCA) which has been approved.

(g) *Man-day.* The term "man-day" is used to quantify work performed for the purpose of establising eligibility under § 210a.3(a)(1)(iii) of this part and means the performance during any day of not less than one (1) hour of agricultural employment or seasonal agricultural services for wages paid or any day in which piece rate work was performed. Work for more than one employer in a single day shall be counted as no more than one man-day for purpose of this part.

(h) *Public cash assistance.* Public cash assistance means income or needs-based monetary assistance, to include but not limited to supplemental security income, received by the alien or his or her immediate family members through federal, state or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

(i) *Replenishment Agricultural Worker (RAW).* Any individual granted temporary resident status or permanent resident status under section 210A(c) of the Act.

(j) *Seasonal Agricultural Services.* Defined in Section 210(h) of the Act as the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture. The regulations further defining these terms can be found at 7 CFR Part 1d.

(k) *Secretaries.* The term "Secretaries" means the Secretaries of Labor and Agriculture.

(l) *Shortage number.* The number, if any, or replenishment agricultural workers to be adjusted or admitted to the United States during a fiscal year as determined by the Department of Labor and the Department of Agriculture under the provisions of section 210A (a) and (b) of the Act. The numerical limitations of sections 201 and 202 of the Act do not apply to the admission or adjustment of aliens for lawful temporary or permanent resident status under section 210A(c) of the Act.

(m) *Special Agricultural Worker (SAW).* Any individual granted temporary or permanent resident status under § 210.(a) of the Act.

(n) *Work-day.* The term "work-day" quantifies the work required of RAWs in order to maintain temporary resident status as described in § 210a.6 of this part and means a calendar day during which at least four (4) hours of work in seasonal agricultural services is performed.

Note.—The term "work-day" is used here in lieu of the statutory term "man-day" to conform with its usage in Department of

Labor regulations at 29 CFR Part 502 and to distinguish between the term "man-day" as defined elsewhere in this section.

§ 210a.2 Registration process.

(a) *General.* The decision to conduct the registration described in this section will be made following the determination of a shortage number or a formal estimate by the Secretaries prior to October 1, 1989, as to the probable size of a shortage number. This number shall include a reasonable margin for a possible emergency increase during the fiscal year.

(b) *Registration standards.* (1) The INS will first establish a list of aliens whose applications for temporary resident status under section 210 (SAW) had been denied. To be on this list there must be credible documentation in the file that the alien meets the RAW eligibility requirements with respect to age and prior agricultural employment. SAW applicants whose applications were denied for fraud or a ground of exclusion under section 212(a) of the Act which cannot be waived shall not be included. After announcement of a shortage number or a preliminary estimate by the Secretaries, aliens who meet the criteria set forth in this sub-paragraph will be furnished a registration form (I–807) to be completed and returned if they desire to be considered for RAW status.

(2) If the difference between the number of persons registered pursuant to paragraph (b)(1) of this section and the shortage number will likely be less than 50,000, registration will be announced only for eligible aliens in the United States who have performed 20 man-days of qualifying work in seasonal agricultural services in the United States during the period beginning May 1, 1985 and ending on November 30, 1988, provided that no person entering the United States illegally after November 6, 1986, shall be eligible.

(3) If the difference between the number of persons registered pursuant to paragraph (b)(1) of this section and the shortage number will likely be greater than 50,000 but less than 200,000, registration will be announced only for eligible aliens in the United States who have performed 20 man-days of any type of agricultural employment in the United States during the period beginning May 1, 1985 and ending on November 30, 1988, provided that no person entering the United States illegally after November 6, 1986, shall be eligible.

(4) If the difference between the number of persons registered pursuant to paragraph (b)(1) of this section and the shortage number is greater than 200,000, and it appears that the number of eligible aliens in the United States will not be sufficient to meet the shortage number, registration will be expanded to include eligible aliens outside the United States who can document 20 man-days of any type of agricultural employment in the United States during the period beginning May 1, 1985 and ending on November 30, 1988, provided that no person entering the United States illegally after November 6, 1986, shall be eligible.

(c) *Registration period.* If a registration is to be conducted, the Service will announce it in the **Federal Register** and publicize the dates for the beginning and end of the registration period.

(d) *Filing of registration form (I–807).* (1) Registration forms will be available from all Service district, legalization and sub-offices. Should it become necessary to expand the scope of registration as provided in paragraph (b)(4) of this section, registration forms will be available from American Embassies and consular posts as required. Any alien who believes that he or she is eligible for temporary resident status as a Replenishment Agricultural Worker (RAW) and who meets the registration standard may register with the INS Central Processing Facility (CPF) (location to be announced at a later date).

(2) All registration forms shall be submitted by regular domestic or international surface or airmail. Registration forms will not be accepted by any means other than by mail, nor at any address other than the one specified in § 210a.2(d)(1). Registration forms submitted by any means requiring any form of written acknowledgement or confirmation of receipt will be rejected.

(3) A registration form (Form I–807) may not be submitted in person. A separate registration form must be filed by each eligible registrant. Only one registration form per registrant will be accepted. If multiple registration forms are submitted by an alien, all of that person's registration forms will be rejected.

(4) Registration forms (Form I–807) containing information which is incomplete or which cannot be read will be discarded. No registration form will be return. The Service will not respond to status inquiries concerning the registration process.

(5) No registration fee will be collected.

(e) *Priority consideration.* Priority consideration will be given to the qualified spouses and unmarried sons or daughters (18 years of age or older) of aliens who have filed an application under IRCA which has been approved.

(f) *Random selection.* (1) Registration forms timely received at the CPF will be ordered at random.

(2) Registrants claiming priority consideration based on a family relationship to an IRCA legalized alien shall be randomly ordered separately from registrants not claiming this priority.

(g) *Fraud or willful misrepresentation.* If fraud or willful misrepresentation of a material fact is found in the registration process, the registration form (Form I–807) will be rejected or the subsequent petition will be denied. Such fraud or willful misrepresentation will subject the person to deportation under section 241 of the Act and referral to a U.S. Attorney for possible prosecution.

(h) *Appeal.* No appeal shall lie from failure to be placed on the list of registrants or to be given priority consideration.

(i) *No benefit for registration.* Neither employment authorization nor any other benefit shall derive from filing a registration form (Form I–807), being placed on the register, or being invited to petition for RAW status.

(j) *Invitation to petition.* (1) Persons registered pursuant to paragraph (b)(1) of this section will first be invited to petition for admission or adjustment in the order on the register, beginning with the highest ranked registrant in the group claiming family relationship to IRCA legalized aliens, and continuing through the remainder of the register by rank order until the shortage number for that year is reached, or until this supply of registrants is exhausted.

(2) If there are insufficient registrants, as provided in paragraph (j)(1) of this section, to meet the shortage number, then registrants will be invited to petition for admission or adjustment in the order on the register, beginning with the highest ranked registrant in the group claiming family relationship to IRCA legalized aliens, and continuing through the remainder of the register by rank order until the shortage number for that year is reached.

§ 210a.3 Eligibility.

(a) *Eligibility*—(1) *General.* An alien eligible for status as an alien lawfully admitted for temporary residence under section 210A(c) of the Act is one who:

(i) Will be eighteen (18) years of age or older by October 1, 1989;

(ii) Is admissible to the United States as an immigrant, or if inadmissble, may have the grounds of excludability waived in accordance with the provisions of section 210(c)(2)(B)(i) of the Act;

(iii) Has performed at least 20 man-days of agricultural employment in the United States during any 12 consecutive months during the period beginning May 1, 1985 and ending on November 30, 1988; and

(iv)(Certifies that he or she is able and intends to perform seasonal agricultural services as required under § 210a.6(b) of this part.

(2) An alien who entered the United States illegally after November 6, 1986, is not eligible for RAW status.

(b) *Proof of eligibility*—(1) *General.* All documentation required to prove age, identity, admissibility, agricultural employment and family relationship must be presented during the petitioning process at the interview as set forth in § 210a.5 of this part.

(2) *Burden of proof.* An alien seeking admission or adjustment of status under this part has the burden of proof in establishing each of the eligibility requirements set forth in paragraph (a) of this section, including family relationship or performance of seasonal agricultural services if claimed on the registration form.

(c) *Proof of identity and age.* (1) Evidence to establish identity and age:

(i) Passport;

(ii) Birth Certificate;

(iii) Any national identity document from the alien's country of origin bearing a photograph and/or fingerprint (e.g. "cedula", "cartilla", "carte d'identite", etc.);

(iv) Driver's license or similar document issued by the state, if it contains a photograph;

(v) Baptismal record or marriage certificate;

(vi) Affidavits; or,

(vii) Such other documentation which may establish the identity and age of the petitioner.

(2) *Assumed names.* (i) In cases where a petitioner claims to have met any of the eligibility criteria under an assumed name, the petitioner has the burden of proving the petitioner was, in fact, the person who used that name. The petitioner's true identity is established pursuant to the requirements of paragraph (c)(1) of this section. The assumed name must appear in documents provided by the petitioner to establish eligibility. To meet the requirements of this paragraph, documentation must be submitted to prove that the assumed name was, in fact, used by the petitioner.

(ii) *Proof of common identity.* The most persuasive proof of common identity is a document issued in the assumed name which identifies the petitioner by photograph, fingerprint or detailed physical description. Other evidence which will be considered are affidavit(s) by a person or persons other than the petitioner, made under oath, which identify the affiant by name and address, state the affiant's relationship to the petitioner and the basis of the affiant's knowledge of the petitioner's use of the assumed name. Affidavits accompanied by a photograph which has been identified by the affiant as the individual known to affiant under the assumed name in question will carry greater weight.

(d) *Evidence of family relationship*—(1) *Spouse of legalized alien.* If the petitioner is the spouse of a legalized alien, then a certificate of marriage between the petitioner and legalized alien is required. If either the husband or wife was married before, then documents must be submitted to show that all previous marriages were legally ended (e.g., divorce decree, death certificate).

(2) *Unmarried son or daughter of a legalized alien.*

(i) If the legalized alien is the mother, then the birth certificate of the child showing the name of the mother is required.

(ii) If the legalized alien is the father, a certificate of marriage of the parents and the child's birth certificate showing the names of the parents must be provided.

(iii) If the legalized alien is the stepparent, the child's birth certicate showing the names of both natural parents, the marriage certificate of the parent to the stepparent, and proof of legal termination of their prior marriages must be provided.

(iv) If the child was born out of wedlock, and the father is the legalized alien, evidence must be provided that a parent/child relationship exists or existed. For example, the child's birth certificate showing the father's name and evidence that he supported the child.

(v) If the child is the adoptive child of a legalized alien, a certified copy of the adoption decree, the legal custody decree if the custody of the child was obtained before adoption, and a statement showing the dates and places the child and adoptive parent lived together must be submitted.

(3) *Documents not available.* If the documents listed in this section are not available, the following evidence may be submitted. The Service may require a statement from the appropriate authority certifying that the needed document is not available:

(i) *Church record.* A certificate under the seal of the church of baptism, dedication, or comparable rite showing the date and place of the child's birth, date of the religious ceremony, and the names of the child's parents;

(ii) *School record.* A letter from the authorities of the first school attended showing the date of admission to the school, the child's date and place of birth, and the names and places of birth of the parents, if shown in the school records;

(iii) *Census record.* State or federal census record showing the name, place of birth, and date of birth or the age of the person listed;

(iv) *Affidavits.* Written statements sworn to or affirmed by two persons who were living at the time who have personal knowledge of the event the petitioner is trying to prove. The affidavit must include the affiant's full name, address, date and place of birth, and his or her relationship to the petitioner, if any; full information concerning the event; and complete details concening how the person acquired knowledge of the event.

(e) *Employment documentation*—(1) *Types of documents.* Aliens petitioning for temporary resident status as a replenishment agricultural worker (RAW) must establish qualifying employment by submitting:

(i) Government employment records; or,

(ii) Records maintained by agricultural producers, farm labor contractors, collective bargining organizations and other groups of organizations which maintain records of employment;

(iii) Worker identification issued by employers or collective bargaining organizations;

(iv) Union membership cards or other union records such as dues receipts;

(v) Other records of the applicant's involvement with organizations providing services to farm workers;

(vi) Work records such as pay stubs, piece work receipts, W–2 forms;

(vii) Certification of filing income tax returns on IRS form 6166; or,

(viii) State verification of the filing of state income tax returns.

(2) *Affidavits.* Affidavits shall not be acceptable to document work performed to qualify for temporary residence as a replenishment agricultural worker (RAW) under this part.

(3) *Non-applicability to certain registrants.* The documentation requirements set forth in this paragraph shall not apply persons registered pursuant to § 210a.2(b)(1) of this part.

(f) *Documents.*—(1) *Original documents.* Original documents must be presented at the time of the interview wherever possible. Copies of records maintained by parties other than the petitioner which are presented in

evidence must be certified as true and complete by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. If at the time of the interview the return of original documents is desired by the petitioner, then they must be accompanied by notarized copies or copies certified true and complete by the petitioner's representative in the format prescribed at § 204.2(j) (1) or (2) of this chapter. At the discretion of the district director or consular officer, original documents, even if accompanied by certified copies, may be temporarily retained for further examination.

(2) *Documents in a foreign language.* Documents in a language other than English must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate.

(g) *Confidentiality of information.* No information furnished pursuant to registration or a petition under this part, including documentary evidence furnished by third parties, shall be used to identify or locate aliens for the purpose of removing them from the United States unless the Service has information that the alien entered the United States illegally subsequent to November 6, 1986; nor will any such information be provided to any other agency of government for the purpose of identifying or penalizing persons for violation of law. The only exceptions shall be to enforce section 210(b)(7) of the Act, and this part.

§ 210a.4 Admissibility.

(a) *General.* An alien seeking temporary resident status as a replenishment agricultural worker must be admissible to the United States as an immigrant. This means that the alien must not be excludable under the provisions of section 212(a) of the Act. However, section 210A(e) of the Act provides that certain grounds of excludability are not applicable, that certain grounds may be waived, and that other grounds cannot be waived.

(b) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to petitioners for temporary resident status: (14), workers entering without Labor Certification; (20), immigrants not in possession of a valid entry document; (21), visas issued without ompliance with section 203; (25), illiterates; and (32), graduates of non-accredited medical schools.

(c) *Special rule for determination of public charge.* Section 212(a)(15) of the Act shall not apply to an alien who demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) *Waiver of grounds for exclusion.* Except as provided in paragraph (e) of this section, the Service may waive any other provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is excludable on grounds which may be waived as set forth in this paragraph, then he or she shall be advised of the procedures for applying for a waiver of grounds of excludability on Form I-690 (procedures to be determined).

(e) *Grounds of exclusion that may not be waived.* The following provisions of 212(a) of the Act may not be waived:

(1) Paragraphs (9) and (10) (relating to criminals);

(2) Paragraph (23) (relating to narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(3) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations);

(4) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

(f) *Exchange visitors.* An alien who was at any time a nonimmigrant exchange visitor (as defined in section 101(a)(15)(J) of the Act), must establish that he or she was not subject to the two-year foreign residence requirement of section 212(e) of the Act or has fulfilled that requirement or has received a waiver of such requirement.

(g) *Entry to U.S. without inspection.* An alien who entered the United States without immigration inspection after Novermber 6, 1986 is not eligible for temporary resident status as a replenishment agricultural worker (RAW) under this part.

§ 210a.5 Petition for temporary resident status.

(a) Selected registrants will be sent petition materials consisting of:

(1) Instructions for completing all required forms;

(2) Petition for Temporary Resident Status as a Replenishment Agricultural Worker (RAW) section 210A of the Immigration and Nationality Act, Form I-805;

(3) Change of Address Card for Replenishment Agricultural Workers (RAW), Form I-697A;

(4) Fingerprint card, Form FD-258;

(5) Medical Examination of Aliens Seeking Adjustment of Status (Pub. L. 99-603), Form I-693; and

(6) ADIT photo instruction sheet.

(b) *Changes to petitioner's address.* The petition package will be mailed to the address supplied on the registration form. If a registrant changes address prior to an invitation to petition, it is his or her responsibility to file a notice of a change of address with the postal service so that the petition package may be forwarded to the current address. If a petition package is returned as undeliverable by the postal service because of an insufficient address or because the registrant has moved and left no forwarding address, he or she will be placed at the end of the list and the next registrant on the register will be selected in his or her place.

(c) *Interview.* (1) Registrants will be invited to appear for an interview at an INS office, American Embassy or Consulate for the purpose of petitioning for admission or adjustment to temporary resident status under this part.

(2) At the time of the interview the petitioner must submit the required fee, proof of identity and age, evidence of admissibility and eligibility, the results of the medical examination on Form I-693, and photographs.

(3) The immigration or consular officer shall judge the sufficiency of the documents submitted and may require additional documentation needed to establish eligibility under this part.

(4) All information and evidence of identity, age, admissibility and family relationship and prior agricultural employment will be subject to verification by the Service or by the American Consulate or Embassy abroad at the time of personal interview.

(d) *Securing petitioner employment records.* (1) When a RAW petitioner alleges that an employer refuses to provide him or her with records relating to his or her employment and the petitioner has reason to believe such records exist, the Service shall attempt to secure such records.

(2) Prior to any attempt by the Service to secure the employment records, the following conditions must be met:

(i) A RAW petition must have been filed;

(ii) An interview must have been conducted;

(iii) The petitioner must have made a good faith effort to obtain the necessary documentation;

(iv) The petitioner's testimony must support credibly his or her claim; and

(v) The Service must determine that the petition cannot be approved in the absence of the employment records.

(3) Provided each of the conditions in paragraph (d)(2) of this section have been met, district directors may issue a

subpoena in accordance with 8 CFR 287.4, for the purpose of obtaining the needed employment records.

(3) *Information that cannot be verified.* (1) Registrants who claim a priority based on a family relationship that cannot be verified by the Service or by the American Consulate or Embassy abroad will be randomly ranked within that portion of the register established for qualifying aliens not claiming a priority based on family relationship.

(2) If any material fact required by the announced registration standard and necessary to establish eligibility or a claim to seasonal agricultural services cannot be verified, the petition will be denied.

(f) *Filing of fee.* The required fee of one hundred and eighty five dollars ($185.00) shall be submitted at the time of the interview at the INS office, American Embassy or Consulate. All fees for petitions where the interview is conducted in the United States shall be in the form of a money order, cashier's check, or bank check made payable to the Immigration and Naturalization Service. No personal checks or currency will be accepted. All fees for petitions where the interview is conducted at an American Consulate or Embassy abroad shall be submitted in United States currency, or in the currency of the country in which the consulate or embassy is located. Fees will not be waived or refunded under any circumstances.

(g) *Medical examination.* If the petitioner is an alien who registered pursuant to § 210a.2 (b)(1) of this part, this paragraph applies only if they have not had a diagnostic test for the presence of the HIV antibody as part of their application for temporary resident status as a special agricultural worker (SAW). This paragraph applies to all other aliens who petition under section 210A(c) of the Act. A petitioner under this part must be examined at no expense to the government by a designated civil surgeon or, in the case of an applicant abroad, by a panel physician designated to perform medical examinations of immigrant visa applicants. The medical report setting forth the findings concerning the mental and physical condition of the applicant shall be incorporated into the record on Form I-693, Medical Examination of Aliens Seeking Adjustment of Status (P.L. 99-603). This form will be sent to the petitioner with the interview notice. The results of the medical examination on Form I-693 must be submitted at the time of the interview. Any petitioner certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(h) *Decision.* (1) A decision to deny or to recommend approval of the petition for RAW status will be made by a Service district director or consular officer, based on all information provided at the interview in support of claims made to eligibility, agricultural employment experience and family relationship to an IRCA legalized alien.

(2) Where a petitioner is unable to substantiate a claim to family preference and fraud has not been established, the petitioner will be randomly re-ranked within that portion of the register established for qualifying aliens not claiming family preference. In this case, the petition will be held in abeyance until such time as the petitioner may again be invited to petition.

(i) *Approval.* (1) If the petitioner was interviewed at a Service office in the United States or at a designated port of entry and approval is recommended at the interview, the Service will conduct record checks to verify the admissibility of the petitioner.

(i) During the period of pendency of the petition, the alien will receive work authorization and permission to travel abroad on Form I-688A, Employment Authorization Card, for a period not to exceed six months from the date of filing.

(ii) If the record check is returned without adverse information concerning the petitioner, the petitioner will be issued Form I-688, Temporary Resident Card, valid for a period of 18 months from the filing date of the petition. This card may be renewed, extended or reissued for the remainder of the three year period of temporary residence upon a finding by the Service that the alien has completed the first required 90 man-days of employment in seasonal agricultural services as provided in § 210a.6 of this part.

(2) Where a petitioner is interviewed and the petition is approved at an embassy or consular post outside of the United States, the petitioner will be provided with an entry document to enable admission to the United States. The petitioner must appear at any Service office within 30 calendar days of admission to the United States to be processed for a Temporary Resident Card (Form I-688). The petitioner will be issued Form I-688, Temporary Resident Card, valid for a period of 18 months from the filing date of the petition. This card may be renewed, extended or reissued for the remainder of the three year period of temporary residence upon a finding by the Service that the alien has completed the required 90 man-days of employment each year in seasonal agricultural services as provided in § 210a.6 of this part.

(j) *Denial.* If the petitioner fails to meet his or her burden of proof at the interview, or if record checks are returned with adverse information that renders the petitioner ineligible for temporary resident status as a replenishment agricultural worker (RAW), the petition will be denied. No appeal shall lie from a decision to deny a petitioner temporary resident status under this part.

(k) *Date of adjustment.* The status of an alien whose petition for temporary resident status is approved by the Service shall be adjusted to that of a lawful temporary resident as of the date on which the petition was filed. An alien whose petition for temporary resident status is approved at an American Consulate or Embassy abroad shall be issued a visa and admitted to the United States for lawful temporary residence.

(l) *Fraud or willful misrepresentation.* If fraud or willful misrepresentation of a material fact is found in the petition process, the petition will be denied. If the petitioner is in the United States, he or she will be subject to deportation under section 241 of the Act and/or referral to the United States Attorney for possible prosecution.

§ 210a.6 Status, benefits and obligations.

(a) *Employment and travel authorization.* An alien who has been lawfully admitted to the United States for temporary residence or whose status has been adjusted to that of a person lawfully admitted for temporary residence under section 210A(c) of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted for permanent residence. Employment and travel abroad will be authorized on Employment Authorization Card (Form I-688A) or Temporary Resident Card (Form I-688).

(B) *Obligation to perform seasonal agricultural services.* (1) An alien who has obtained temporary resident status as a replenishment agricultural worker must establish to the Service as set forth in this section that he or she has performed ninety (90) work-days of seasonal agricultural services in each of three successive twelve (12) month periods following the date of filing the petition.

(2) An alien granted lawful permanent residence on the basis of temporary

residence under section 210A(c) of the Act may not be naturalized as a citizen of the United States under any provision in Title III of the Act unless the alien has performed ninety (90) work-days of seasonal agricultural service in any two (2) twelve (12) month periods prior to naturalization in addition to the three (3) twleve (12) month periods required by section 210A(d)(5)(A) of the Act.

(3) A replenishment agricultural worker who fails to establish to the Attorney General that he or she has fulfilled the requiremnts of section 210A(d)(5)(A) of the Act to perform seasonal agricultural services in any one of the twelve (12) month periods shall be subject to deportation proceedings under section 241(a)(20) of the Act.

(c) *Adjustment of required work-days.* The number of work-days of required employment in seasonal agricultural services specified in this part is subject to adjustment by the Department of Labor and the Department of Agriculture under section 210A(a)(8) of the Act. A notice of any such adjustment will be published in the **Federal Register.**

(d) *Proof of performance of seasonal agricultural services.* (1) The burden is on the RAW temporary resident or permanent resident to collect, maintain, and have available for inspection evidence that he or she has performed the requisite number of work-days of seasonal agricultural services for each year as described in this section.

(2) Such evidence may consist of certificates provided to employees by employers as required in section 210A(b)(2) of the Act or the same type of documentation as may be submitted under section 210(b)(3) of the Act. (Certificates required by section 210A(b)(2) are also required by Department of Labor regulations located at 29 CFR 502.13. The Department of Labor may impose civil monetary penalties upon employers that fail to comply with those regulations.)

(e) *Securing RAW employment records.* (1) When a RAW temporary resident or permanent resident alleges that an employer refuses to provide him or her with records relating to his or her employment and the petitioner has reason to believe such records exist, the Service shall attempt to secure such records.

(2) Prior to any attempt by the Service to secure the employment records, the following conditions must be met:

(i) The alien must be in approved temporary resident status as a Replenishment Agricultural Worker;

(ii) Must have made reasonable attempts to secure the documentation from the employer;

(iii) The alien's testimony must credibly his or her claim;

(iv) The Service must determine that temporary resident status is in jeopardy in the absence of the employer records.

(3) Provided each of the conditions in paragraph (e)(2) of this section have been met, district directors may issue a subpoena in accordance with 8 CFR 287.4, for the purpose of obtaining the needed employment records.

(f) *Reissuance of Temporary Resident Card (Form I–688).* (1) Upon a finding by the Service that the 90 work-days in seasonal agricultural services required during the first twelve (12) month period have been completed, a second Temporary Resident Card (Form I–688) shall be issued and will be valid through the end of the required thirty six (36) month period of temporary residence.

(2) Form I–688 shall not be issued, reissued or extended and shall lose its validity if the temporary resident status of the alien has been terminated as provided in paragraph (h) of this section.

(g) *Ineligibility for immigration benefits.* An alien who is admitted for or whose status is adjusted to that of a lawful temporary resident under section 210A(c) of the Act is not entitled to submit a petition pursuant to section 203(a)(2) of the Act and cannot receive any other benefit or consideration accorded under the Act to aliens lawfully admitted for lawful permanent residence, except as provided in paragraph (a) of this section.

(h) *Termination of temporary resident status.* (1) The temporary resident status of a replenishment agricultural worker shall be terminated under section 210A(d)(2) of the Act upon a finding by the Service that the alien is deportable under sections 235, 236, 237 and 241 of the Act as amended to include failure to meet the work-day requirements of section 210A(d)(5)(A) of the Act.

(2) *Surrender of Form I–688A or Form I–688.* An alien whose status as a temporary resident has been terminated under this section shall, upon demand, promptly surrender Form I–688a, Employment Authorization Card or Form I–688, Temporary Resident Card, to the district director having jurisdiction over the alien's place of residence, or, in the case of a commuter, employment.

§ 210a.7 Adjustment to permanent resident status.

The status of an alien lawfully admitted to the United States for temporary residence under section 210A(c) of the Act (if the alien has otherwise maintained such status as required by the Act) shall be adjusted to that of an alien lawfully admitted to the United States for permanent residence as of the end of the three (3) year period that begins on the date the alien was granted such temporary resident status. Procedures for the adjustment process will be published at a later date.

Dated: February 15, 1989.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 89–5050 Filed 3–2–89; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89–AWA–2]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal Airways located in the Detroit metropolitan area. These airway changes are the result of the reorganization of the Detroit metropolitan air traffic control tower's (ATCT) and Cleveland air route traffic control center's (ARTCC) airspace. The traffic growth at the Detroit Metropolitan Airport and the intermix with the Chicago area traffic mandates these changes at this time. This action would improve traffic flow in the area and reduce controller workload.

DATES: Comments must be received on or before April 17, 1989..

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 89–AWA–2, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Il 60018.

The official docket may be examined in the Rule Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic

Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comment received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering and amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of fifteen airways located in the Detroit, MI, area. The Detroit metropolitan air traffic airspace area is being reorganized. The traffic growth at the Detroit Metroplitan Airport has been increasing each year and this growth is forecasted to continue. This action woud provide airways for departures and arrival at the Detroit Metroplitan Airport, Wayne County Airport and the satellite airports. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-2 [Amended]

By removing the words "INT Salem 083° and Aylmer, ON, Canada, 260° radials;" and substituting the words "INT Salem 093°T(096°M) and Aylmer, ON, Canada, 254°T(262°M) radials;"

V-6 [Amended]

By removing the words "Waterville; DRYER, OH;" and substituting the words "Waterville; INT Waterville 091°T(093°M) and DRYER, OH, 282°T(287°M) radials; DRYER;"

V-30 [Amended]

By removing the words "Waterville, OH; DRYER, OH;" and substituting the words "Waterville, OH; INT Waterville 091°T(093°M) and DRYER, OH, 282°T(287°M) radials; DRYER;"

V-126 [Amended]

By removing the words "Waterville, OH; DRYER, OH;" and substituting the words "Watervill-42e, OH; INT Waterville 091°T(093°M) and DRYER, OH, 282°T(287°M) radials; DRYER;"

V-10 [Amended]

By removing the words "Litchfield, MI; Carleton, MI;" and substituting the words "Litchfield, MI; INT Litchfield 101°T(102°M) and Carleton, MI, 262°T(265°M) radials; Carleton;"

V-11 [Amended]

By removing the words "Salem, MI; 6 miles wide to INT Salem 052° and Windsor, ON, Canada, 335° radials." and substituting the words "INT Fort Wayne 039°T(039°M) and Pontiac, MI, 212°T(215°M) radials; to INT Pointiac 212°T(215°M) and Carleton, MI, 262°T(265°M) radials."

V-26 [Amended]

By removing the words "INT Salem 139° and DRYER, OH, 309° radials;" and substituting the words "INT Salem 140°T(143°M) and DRYER, OH, 305°T(310°M) radials;"

V-42 [Revised]

From Waterville, OH; INT Waterville 084°T(086°M) and Akron, OH, 297°T(301°M) radials; INT Akron 297°T(301°M) and Youngstown, OH, 272°T(277°M) radials; Youngstown.

V-45 [Amended]

By removing the words "Appleton, OH. From Youngstown, OH; INT Youngstown 272° and Akron, OH, 298° radials; INT Akron 298° and Waterville, OH, 085° radials; Waterville; Jackson, MI;" and substituting the words "Appleton, OH; Waterville, OH; INT Waterville 306°T(308°M) and Jackson, MI, 164°T(169°M) radials; Jackson;"

V-75 [Amended]

By removing the words "DRYER, OH." and substituting the words "DRYER, OH; to INT DRYER 321°T(326°M) and Salem, MI, 130°T(133°M) radials."

V-90 [Amended]

By removing the words "From Windsor, ON, Canada, via INT Windsor 083° and Dunkirk, NY, 266° radials; Dunkirk." and substituting the words "From Windsor, ON, Canada; INT Windsor 092°T(098°M) and Dunkirk, NY, 262°T(269°M) radials; Dunkirk."

V-96 [Amended]

By removing the words "Waterville; Windsor, ON, Canada, excluding the portion within Canada." and substituting the words "Waterville."

V-98 [Amended]

By removing the words "From Carleton, MI, Windsor, ON, Canada;" and substituting the words "From Dayton, OH; INT Dayton 360°T(001°M) and Carleton, MI, 243°T(246°M) radials; to INT Carleton 243°T(246°M) and Waterville, OH, 321°T(323°M) radials. From Windsor, ON, Canada;"

V-100 [Amended]

By removing the words "Litchfield, MI; INT Litchfield 104° and Carleton, MI, 258° radials; Carleton." and substituting the words "to Litchfield, MI."

V-103 [Amended]

By removing the words "INT Akron 312° and Windsor, ON, Canada, 134° radials; INT Windsor 134° and Salem, MI, 117° radials; Salem; INT Salem 308° and Lansing, MI, 103° radials; to Lansing." and substituting the words "INT Akron 319°T(323°M) and Windsor, ON, Canada, 125°T(131°M) radials; Windsor; INT Windsor 292°T(298°M) and Lansing, MI, 091°T(093°M) radials; to Lansing."

Issued in Washington, DC, on February 23, 1989.

William C. Davis,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-4964 Field 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 89-AWA-3]

Proposed Alteration of VOR Federal Airways and Jet Routes; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal Airways and Jet Routes located in the Detroit metropolitan area. These airway and jet route changes are the result of the reorganization of the Detroit metropolitan air traffic control tower's (ATCT) and Cleveland air route traffic control center's (ARTCC) airspace. The traffic growth at the Detroit Metropolitan Airport and the intermix with the Chicago area traffic mandates these changes at this time. These actions would improve traffic flow in the area and reduce controller workload.

DATES: Comments must be received on or before April 17, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 89-AWA-3, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of thirteen airways and two jet routes located in the Detroit, MI, area. The Detroit metropolitan air traffic airspace area is being reorganized. The traffic growth at the Detroit Metropolitan Airport has been increasing each year and this growth is forecasted to continue. These actions would improve traffic flow in the area and reduce controller workload. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evalaution as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation Safety, VOR Federal airways and jet routes.

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-116 [Amended]

By removing the words "INT Jackson 084° and Salem, MI, 254° radials; Salem; Windsor, ON, Canada; INT Windsor 100° and Erie, PA, 275° radials; Erie;" and substituting the words "INT Jackson 089°T(094°M) and Salem, MI, 251°T(254°M) radials; Salem; Windsor, ON, Canada; INT Windsor 092°T(098°M) and Erie, PA, 281°T(287°M) radials; Erie

V-133 [Amended]

By removing the words "INT Mansfield 346° and Salem, MI, 139° radials;" and substituting the words "INT Mansfield 349°T(352°M) and Salem, MI, 140°T(143°M) radials;"

V-176 [Removed]

V-218 [Amended]

By removing the words", via Lansing, MI; Pontiac, MI; INT Pontiac 112° and Windsor, ON, Canada, 320° radials; Windsor; INT Windsor 134° and Akron, OH, 312° radials; to Akron. The airspace within Canada is excluded." and substituting the words; "to Lansing, MI."

V-221 [Amended]

By removing the words "INT Jackson 084° and Salem, MI, 254° radials; Salem; INT Salem 083° and Erie, PA, 290° radials;" and substituting the words "INT Jackson 089°T(094°TM) and Salem, MI, 251°T(254°M) radials; Salem; INT Salem 082°T(085°M) and Aylmer, Canada, 261°T(269°M) radials; INT Aylmer 260°T(269°M) and Erie, PA, 303°T(309°M) radials;"

V-232 [Amended]

By removing the words "From INT of the Cleveland, OH, 024° and the Chardon, OH, 281° radials, via Chardon;" and substituting the words "From Chardon, OH;"

V-275 [Amended]

By removing the words "INT Dayton 007° and Salem, MI, 202° radials; Salem." and substituting the words "to INT Dayton 007°T(008°M) and Waterville, OH, 246°T(246°M) radials."

V-297 [Amended]

By removing the words "INT Akron 298° and Carleton, MI, 120°; radials to Carleton." and substituting the words "INT Akron 303°T(307°M) and Salem, MI, 130°T(133°M) radials."

V-337 [Amended]

By removing the words "INT Akron 328° and Windsor, ON, Canada, 116° radials; Windsor; 29 miles 7 miles wide (3 miles east and 4 miles west of centerline), INT Windsor 335° and Saginaw, MI, 131° radials; Saginaw;" and substituting the words "INT Akron 343°T(347°M) and Peck, MI, 143°T(150°M) radials; Peck; Saginaw, MI;"

V-450 [Amended]

By removing the words "INT Flint 088° and Peck, MI, 237° radials." and substituting the words "INT Flint 091°T(094°M) and London, ON, Canada, 263°T(271°M) radials; to London, excluding the airspace within Canada."

V-464 [Amended]

By removing the words "From the INT of Windsor, ON, Canada, 083° and Aylmer, ON, Canada, 235° radials, via Aylmer;" and substituting the words "From Salem, MI; via INT Salem 082°T(085°M) and Aylmer, ON, Canada, 261°T(269°M) radials; Aylmer;"

V-526 [Amended]

By removing the words "INT Waterville 108° and DRYER, OH, 252°, radials;" and substituting the words "INT Waterville 113°T(115°M) and DRYER, OH, 252°T(257°M) radials;"

V-31 [Amended]

By removing the words "INT Rochester 279° and Geneseo, NY, 305° radials; INT Geneseo 305° and Kleinburg, ON, Canada, 133° radials; Kleinburg." and substituting the words "INT Rochester 279°T(288°M) and Toronto, Canada, 151°T(160°M) radials; Toronto."

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. § 75.100 is amended as follows:

J-63 [Amended]

By removing the words "to Syracuse." and substituting the words "Syracuse; INT Syracuse 270°T(281°M) and Ash, ON, Canada 098°T(107°M) radials; Ash; to Green Bay, WI. The portion within Canada is excluded."

J-547 [Amended]

By removing the words "Flint, MI; Peck, MI; London, ON;" and substituting the words "Flint, MI; London, ON, Canada;"

Issued in Washington, DC, on February 23, 1989.

William C. Davis,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-4965 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 88-AWA-4]

Proposed Establishment of Jet Route J-596; ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 88-AWA-4, which was published in the **Federal Register** on June 21, 1988. That NPRM proposed to establish a new Jet Route/High Level Route HL/J-596 between Sherbrooke, PQ, Canada and Halifax, NS, Canada, via Bangor, ME. The Canadian Government requested this route to provide efficient routing for traffic en route to Canadian destinations.

EFFECTIVE DATE: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

The Proposed Rule

On June 21, 1988, a Notice of Proposed Rulemaking was published in the **Federal Register** to establish new Jet Route/High Level Route J-596 from Sherbrooke, PQ, Canada, via Bangor, ME, to Halifax, NS, Canada (53 FR 23258). Transport Canada requested this route to provide an efficient routing for traffic between Canadian points which cross a segment of the New England area.

Summary of Comments

Comments were received from the Boston Air Route Traffic Control Center (ARTCC) and the Department of Defense (DOD). The objections to the proposed J-596 were as follows:

J-596 would be located within airspace that has high density military activity and training. Also involved are the Air Refueling Tracks AR 212, AR 204 and AR 205. Therefore, the Boston ARTCC and the DOD stated they consider that the route would serve no beneficial purpose to the public or the National Airspace System.

Conclusions

The FAA has decided not to implement the proposed J-596 segment between Sherbrook, PQ, Canada and Bangor, ME, because of the military

activity and the limited time of use available for civil traffic.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88–AWA–4, as published in the **Federal Register** on June 21, 1988 (53 FR 23258) is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, DC, on February 16, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–4966 Filed 3–2–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 75

[Airspace Docket No. 88–AWP–20]

Proposed Alteration of Jet Route; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J–212 between Buckeye, AZ, and Palm Springs, CA. The current minimum en route altitude (MEA) northwest of Buckeye is 31,000 feet mean sea level (MSL). This action would aid in improving the flow of traffic to Palm Springs and the Los Angeles Basin Airports by lowering the MEA to 26,000 feet.

DATES: Comments must be received on or before April 10, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 88–AWP–20, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–AWP–20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the description of Jet Route J–212 between Buckeye and Palm Springs. Currently the MEA between Buckeye and Palm Springs is 31,000 feet MSL which has created air traffic control problems for aircraft arriving at Palm Springs and the Los Angeles Basin Airports. Flight inspection data indicates the MEA could be lowered to 26,000 feet MSL if the route alignment is changed. This action would improve the flow of traffic into Palm Springs and the Los Angeles Basin area. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-212 [Revised]

From Stanfield, AZ; Buckeye, AZ; INT Buckeye 283°T(269°M) and Palm Springs, CA, 093°T(080°M) radials; to Palm Springs.

Issued in Washington, DC, on February 16, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-4967 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, 210, and 212

Revision of Geothermal Resources Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of public comment period and public hearing.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on its Notice of Proposed Rulemaking, which was published in the **Federal Register** on January 5, 1989 (54 FR 354), proposing to amend and clarify existing regulations to define the value for royalty purposes of geothermal resources produced from Federal lands administered by the Department of the Interior and the Department of Agriculture. In response to requests for additional time, MMS is extending the comment period from March 6, 1989, to April 17, 1989.

DATE: Written comments must be received on or before April 17, 1989. A hearing will be held on March 28, 1989, 8:30 a.m. to 4 p.m. in Lakewood, Colorado.

ADDRESS: Written comments may be mailed to Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

The hearing will be held in the auditorium, building 25, Denver Federal Center, 6th and Kipling Streets, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

Date: February 28, 1989.

Thomas M. Gernhofer,

Acting Director, Minerals Management Service.

[FR Doc. 89-5053 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 290

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[AA-340-89-4332-02]

Cave Resources Management

AGENCY: Forest Service, Agriculture; Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Cave Resources Protection Act of 1988 (Pub. L. 100-691) (the Act) requires the protection and maintenance, to the extent practical, of significant caves on Federal lands administered by the Secretaries of Agriculture and the Interior. The Act requires the Secretaries of Agriculture and the Interior to issue regulations to achieve the purposes of the Act. The regulations promulgated by the respective Secretaries are to be developed cooperatively, and to the extent practical the regulations are to be similar. The regulations are to include, but not be limited to, criteria for the identification of significant caves. The Department of the Interior and the Department of Agriculture have formed an interagency team to prepare the regulations, and request suggestions from the public on the content of the rules, and particularly suggestions as to criteria for determining what constitutes a significant cave.

DATE: Comments should be submitted by April 3, 1989. Comments received or postmarked after this date may not be considered in developing the proposed rulemaking. This limitation of time to comment is essential because the Act requires final regulations to be issued by August 18, 1989.

ADDRESS: Comments should be sent to the interagency team at the following address: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Hellie, (202) 343-6064, Delmar Price, (202) 343-9353, or Tom Lennon, (202) 447-7754.

SUPPLEMENTARY INFORMATION: To assist persons providing suggestions on the regulations, the following is a brief summary of the major provisions of the Federal Cave Resources Protection Act, contained mainly in sections 4, 5, and 6 of the Act, the sections guiding Federal agencies in the administration of cave resources.

Regulations are to be issued by both the Secretary of Agriculture and the Secretary of the Interior not later than 9 months after enactment of the Act. The regulations shall include, but not be limited to, criteria for the identification of significant caves.

The Secretary of Agriculture and the Secretary of the Interior are to take such actions as may be necessary to further the purposes of the Act, which shall include, but not be limited to, preparation of an initial list of significant caves for lands under their respective jurisdictions. The initial list is required to be prepared not later than 1 year after publication of the final regulations and to apply the significance criteria defined in the regulations. The list is to be developed after consultation with appropriate private sector interests, including cavers. The initial list of significant caves is also required to be updated, again after consultation, on a periodic basis. The updating process is required to be described by policy or regulation and include management measures to assure that caves under consideration for the list are protected during the period of consideration. Caves recommended to the respective Secretaries for possible inclusion on the list shall be added to the list if the respective Secretaries determine that they meet the criteria for significance as defined in the regulations.

Actions to be taken by the respective Secretaries are also to provide for the regulation or restriction of use of significant caves as are considered appropriate, entering into management agreements with persons of the scientific and recreational caving community, and the appointment of appropriate advisory committees.

The respective Secretaries are to insure that significant caves are considered in the preparation of any land management plan, if the preparation or revision of the plan begins after the date of enactment of the

Act. Both Secretaries are also required to foster communication, cooperation, and the exchange of information between their respective agency land managers, those who utilize caves, and the public.

The Act also provides the respective Secretaries authority to issue permits for the collection and removal of cave resources, including the posting of bonds to insure compliance with the provisions of any issued permit. The Act also provides for the revocation of permits for violations of the Act or the permit. Special provisions for the regulation of cave resources located on Indian lands are also contained in the Act.

Sections 7 and 8 of the Act contain provisions pertaining to prohibited acts with respect to cave resources and the criminal and civil penalties which may be imposed for violation of the Act, the regulations, or any permit issued under them.

Comments and suggestions are invited on how the regulations might address the requirements of the Act. Because the Act applies to lands administered by both the Department of Agriculture and the Department of the Interior, a joint interagency team has been established to develop the regulations called for by the Act. Representatives on the interagency team include specialists from: Forest Service (Department of Agriculture); Bureau of Land Management, National Park Service, Fish and Wildlife Service, Bureau of Indian Affairs, and Bureau of Reclamation (Department of the Interior).

To simplify coordination requirements and to facilitate public submittal of comments, they should be sent to the address given. Copies of the comments will then be distributed to the other Federal agencies involved.

George S. Dunlop,

Assistant Secretary, Natural Resources and Environment.

James E. Cason,

Acting Assistant Secretary of the Interior.

[FR Doc. 89-4968 Filed 3-2-89; 8:45 am]

BILLING CODE 3410-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

[CC Docket No. 87-124; FCC 89-55]

Telephone Hearing Aid Compatibility

AGENCY: Federal Communications Commission (Commission).

ACTION: Proposed rules.

SUMMARY: The Commission proposes to amend Part 68 of its rules to require nearly all telephones manufactured in or imported into the United States after August 16, 1989, to be hearing aid compatible. These rule modifications are being made to ensure that hearing impaired persons have reasonable access to telecommunications services and equipment and to comply with the Hearing Aid Compatibility Act of 1988.

DATES: Comments must be received on or before March 9, 1989, and reply comments on or before March 20, 1989.

ADDRESS: Comments shall be filed with the Federal Communications Commission, Washington, DC 20554 as prescribed in §§ 1.415 through 1.419 of the Commission's Rules.

FOR FURTHER INFORMATION CONTACT: Robert James, (202) 634-1831.

SUPPLEMENTARY INFORMATION: This is a summary of a FNPRM in CC Docket No. 87-124 adopted by the Commission on February 13, 1989, and released on February 16, 1989. The full text of the item may be examined in the Commission's Docket Branch, Room 230, 1919 M Street NW., Washington, DC, during regular business hours or purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800.

FNPRM

The Commission's current rules require telephones classified as "essential"—meaning telephones provided for emergency use, coin telephones and other telephones frequently used by the hearing impaired—be internally compatible with hearing aids. A number of parties have presented arguments to us suggesting that these rules may not be enough. In response, the Commission initiated CC Docket No. 87-124, to gather information on what, if any, additional rules or rule revisions are needed to assure that the disabled of America have reasonable access to telecommunications services. In the NPRM phase of this proceeding, the Commission proposed that the definition of "essential telephones" be expanded to include all credit card telephones and workplace telephones located in common areas likely to be used by hearing impaired employees.

On August 17, 1988, the "Hearing Aid Compatibility Act of 1988" (HAC Act) was enacted. This law amends section 710(b) of the Communications Act of 1934. It requires almost all telephones manufactured in or imported into this country more than one year after its enactment to be hearing aid compatible. The new law exempts refurbished, repaired or resold telephones, telephones used with public and private mobile radio services, and secure telephones used for classified communications. The HAC Act provides a three year grace period for cordless telephones before they must comply with the requirement. It directs the Commission to review the exceptions for public and private mobile telephones periodically and to rescind them if they are no longer warranted. Also, the HAC Act grants the Commission authority to waive the hearing aid compatibility requirement with respect to new telephones if telephone manufacturers can demonstrate it is infeasible or too costly to meet this standard. In this FNPRM, the Commission proposes to amend Part 68 of its rules to comply with the HAC Act.

In accordance with 5 U.S.C. 603(a), the Federal Communications Commission concludes that the proposed rules will not have a significant adverse economic impact on small entities.

Comments on the proposed rules are sought.

List of Subjects in 47 CFR Part 68

Hearing aid compatible telephones, Notice, Technical standards.

Legal Basis

This FNPRM seeking to amend Part 68 of the Commission's rules is issued pursuant to authority contained in sections 1 and 4(i) of the Communications Act of 1934, as amended, and the Hearing Aid Compatibility Act of 1988.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-4403 Filed 3-2-89; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525, 546, and 552

[GSAR Notices 5-242 and 5-256]

General Services Administration Acquisition Regulation; Foreign Acquisition and Quality Assurance

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), that would: (1) amend sections

525.105, 525.105–70, and 525.105–71 to simplify regulatory coverage and prescribe an amended Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware provision and a Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware clause; (2) add section 525.302 to provide policy applicable when contracting under the Balance of Payments Program; (3) retitle and revise section 525.407 to simplify regulatory coverage and prescribe the renumbered Eligible Products from Nondesignated Countries—Waiver clause; (4) revise section 546.710 to prescribe three new warranty clauses; (5) revise sections 552.225–70 and 552.225–71 to include stainless steel flatware in the provision and clause; (6) delete sections 552.225–72 and 552.225–73; (7) renumber and revise section 552.225–74 to clarify regulatory coverage; (8) add section 552.246–17 to provide the text for the Warranty of Supplies of a Noncomplex Nature clause with an Alternate I to be used for commercial items; and (9) add sections 552.246–73 and 552.246–74 to provide the text of the Warranty—Multiple Award Schedule and Warranty—International Multiple Award Schedule clauses.

DATE: Comments are due in writing on or before April 3,1989.

ADDRESS: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW, Room 4026, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Linfield, Office of GSA Acquisition Policy and Regulations, (202) 566–1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The number of small entities to which the restrictions in Part 525 would apply is considered not significant in relation to the total number of small entities that do business with the General Services Administration. To the extent that the warranty clauses prescribed in section 546.710 rely on the contractor's standard commercial warranty, the regulatory impact on small entities is also considered insignificant. Therefore, no regulatory flexibility analysis has been prepared. The Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware clause at 552.255–70 contains an information collection requirement which requires the approval of OMB under section 3504(h) of the Paperwork Reduction Act. The collection requirement in section 552.225–70 has previously been approved by OMB and assigned Control No. 3090–0198. Since the collection requirement is being amended to include stainless steel flatware, this proposed rule has been submitted to OMB for approval. Comments on the information collection requirement in GSAR 552.225–70 may be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the collection is "General Services Administration Acquisition Regulation (GSAR), Part 525, Foreign Acquisition." The provision at GSAR 552.225–70 requires offerors to identify items that are foreign end products and the amount of import duty applicable to each item. The information is needed by the contracting office to comply with procurement restrictions for hand or measuring tools and stainless steel flatware contained in GSA and DOD Appropriation Acts. The respondents are offerors on GSA acquisitions for hand or measuring tools and stainless steel flatware. The estimated annual burden for this collection is 6.7 hours. This is based on an estimated average burden hour per response of 0.16, a proposed frequency of 1 response per respondent, and an estimated number of respondents of 40.

List of Subjects in 48 CFR Parts 525, 546, 552.

Government procurement.

1. The authority citation for 48 CFR Parts 525, 546, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).]

PART 525—FOREIGN ACQUISITIONS

2. Sections 525.105, 525.105–70, and 525.107–71 are revised to read as follows:

525.105 Evaluating offers.

(a) Proposed awards, under FAR 25.105, must be submitted to the HCA or a designee for approval. A statement of facts containing the following information should be submitted for approval.

(1) Description of the item(s), including unit and quantity.

(2) Estimated cost.

(3) Statement as to whether duty is included in the estimate cost and, if not, the reasons for exclusion.

(4) Transportation costs for delivery to destination if the item is to be procured f.o.b. origin.

(5) Country of origin.

(6) Name and address of proposed contractor(s).

(7) Brief statement as to necessity for procurement.

(8) Reasons supporting request for approval explaining—

(i) Why the cost would not be unreasonable or inconsistent with the public interest when award to a domestic concern for more than $250,000 would be made to a small business or labor surplus area concern after the 12 percent factor is applied, but not to a firm after the 6 percent is applied.

(ii) Any proposed rejection of an acceptable low foreign offer to protect essential national security interests or rejection of any offer for other reasons of national interest, when the Trade Agreements Act of 1979 is not applicable.

(b) A determination to reject a foreign offer using differentials greater than those provided at FAR 25.105 may be made—

(1) If necessary to protect national security interests; and

(2) After the HCA or a designee obtains advice from the Director, Federal Emergency Management Agency. The Executive Office of the President, Office of Management and Budget, must be apprised of the facts of each case where such a determination is made.

525.105–70 Evaluating offers—hand or measuring tools or stainless steel flatware for other than the Department of Defense (DOD).

(a) *Definitions.* "Hand or mesuring tool," as used in this section, means Groups 51 and 52 in Cataloging Handbook H2–1, Federal Supply Classification Part I, Groups and Classes, published by the Defense Logistics Agency, Defense Logistics Services Center, Battle Creek, Michigan.

(b) *GSA Appropriation Act restrictions.* (1) The current GSA Appropriation Act restricts the acquisition of any hand or measuring tool and stainles steel flatware to domestic end products, except to the extent the Administrator of General Services or a designee determines that a satisfactory quality and sufficient quantity are unavailable from sources in the United States or its possessions or except as prescribed by section 6–104.4(b) of the Armed Services Procurement Regulations (ASPR) in effect on June 15, 1970.

(2) For hand or measuring tools, the GSA Appropriation Act further provides that a factor of 75 percent is to be used in evaluating foreign end products in lieu of the 50 percent in ASPR 6-104.4(b).

(c) *Evaluation procedures.* Offers for hand or measuring tools or stainless steel flatware must be evaluated using the following procedures adapted from ASPR 6-104.4(b).

(1) An offer of an end product manufactured in Canada will be evaluated on the same basis as a domestic end product after applicable duty, determined under 19 U.S.C. 1201 is included, irrespective of whether or not a duty-free entry certificate will be issued.

(2) Any other offer of a foreign end product must be evaluated at the greater evaluated price determined by increasing either (i) the net value of the offer (exclusive of duty) by 50 percent (75 percent for hand or measuring tools) or (ii) the gross value of the offer (inclusive of duty) by 6 percent.

(3) A 12 percent factor must be used in (c)(2)(ii) above, when (i) a small business or any labor surplus area concern submits the low acceptable domestic offer or (ii) an otherwise low acceptable domestic offer would result in a contract not to exceed $100,000 based on its application, but not on the application of the factors in (c)(2)(i) and (ii).

(4) If a contract exceeding $100,000 to a small business or labor surplus area concern would result under the circumstances in (c)(3)(ii), the matter must be submitted to the HCA for a decision whether such award would involve unreasonable cost or be inconsistent with the public interest.

(5) The above evaluation must be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation. Award on the domestic offer will be made when any tie results from the foregoing procedures.

(d) *Solicitation provision.* The contracting officer shall insert the provision at 552.225-70, Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware, in solicitations for the acquisition of hand or measuring tools or stainless steel flatware for other than Department of Defense requirements.

525.105-71 Procurement of hand or measuring tools or stainless steel flatware for DOD.

(a) *Definitions.* "Domestic end product," as used in this section, means a hand or measuring tool, other than an electric or air-motor driven hand tool, or stainless steel flatware, that is wholly produced or manufactured, including all components, in the United States or its possessions.

"Electric or air-motor driven hand tool," as used in this section, means a domestic end product if the cost of components produced or manufactured in the United States exceeds 75 percent of the cost of all components in the end product.

"Stainless steel flatware," as used in this section, means nonstock items of stainless steel flatware purchased for DOD and items with the following National Stock Numbers (NSN): 7340-00-060-6057; 7340-00-205-3340; 7340-00-205-3341; 7340-00-241-8169; 7340-00-241-8170; 7340-00-241-8171; 7340-00-559-8357; 7340-00-688-1055; 7340-00-721-6316; 7340-00-721-6971.

(b) *DOD Appropriation Act restrictions.* (1) Except for purchases of $25,000 or less, DOD is prohibited from acquiring hand or measuring tools or stainless steel flatware (see 525.105-71(a)), that are not domestic end products, except in the case of stainless steel flatware, when the Secretary of the department concerned determines that a satisfactory quality and quantity produced or manufactured in the United States or its possessions are not available when needed at domestic market prices.

(2) In GSA procurements of such tools or flatware, a determination must be made by the appropriate Commodity Center Director whenever GSA applies the current DOD Appropriation Act restrictions. This determination must be made on a case-by-case basis, whenever (i) DOD requirements are included in the solication and (ii) the hand or measuring tools or stainless steel flatware are available from domestic sources.

(3) The basis for applying the DOD Appropriation Act restrictions to GSA acquisitions is the—

(i) Statutory prohibition on DOD, which applies when DOD requisitions such items, regardless of whether or not it is from the GSA stock program;

(ii) Impracticality of establishing a dual supply system to satisfy the requirements of civilian and military agencies; and

(iii) Language in the GSA Appropriation Act, which provides for the rejection of any offer when it is considered necessary for reasons of national interest under ASPR 6-104.4(d)(3)(ii).

(c) *Contract clause.* The contracting officer shall insert the clause at 552.225-71, Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware, in solicitations and contracts for the acquisition of hand or measuring tools or stainless steel flatware when the Commodity Center Director makes a determination under 525.105-71(b).

3. Section 525.302 is added to read as follows:

525.302 Policy.

(a) Decisions under FAR 25.302(b)(3) must be supported as provided in 525.108-70(a).

(b) Use of a greater differential than provided in FAR 25.302(c) may be authorized by the HCA or a designee.

525.370 [Removed]

4. Section 525.370 is removed.

5. Section 525.407 is retitled and revised to read as follows:

525.407 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 552.225-72, Eligible Products from Nondesignated Countries—Waiver, in solicitations and contracts subject to the Trade Agreements Act.

546.470-3 and 546.470-4 [Removed]

6. Sections 546.470-3 and 546.470-4 are removed.

7. Section 5456.710 is revised to read as follows:

546.710 Contract Clauses.

(a) The contracting officer shall insert the clause at 552.246-17, Warranty of Supplies of a Noncomplex Nature, in solicitations and contracts instead of FAR 52.246-17. If commercial items are to be acquired, the clause at 552.246-17 must be used with Alternate I instead of FAR 52.246-17 with its Alternate I.

(b) The contracting officer shall insert the clause at 552.246-73, Warranty-Multiple Award Schedule, in solicitations and multiple award schedule (except international schedule) contracts.

(c) The contracting officer shall insert the clause at 552.246-74, Warranty-International Multiple Award Schedule, in solicitations and international multiple award schedule contracts.

(d) The contracting officer shall insert the clause at 552.246-76, Warranty of Pesticides, in solicitations and contracts involving the procurement of pesticides.

(e) The contracting officer shall insert the clause at 552.246-75, Guarantees, in solicitations and contracts for construction when the contract amount is expected to exceed the small purchase limitation.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Sections 552.225–70 and 552.225–71 are revised to read as follows:

552.225–70 Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware.

As prescribed in 525.105–70(D), insert the following provision:

Buy American Act—Hand or Measuring Tools or Stainless Steel Flatware (XXX 1989)

Offers of foreign end products will be evaluated in accordance with GSAR 525.105–70(c) (48 CFR 525.105–70(c)). Offerors that intend to supply foreign end products must specify below or on an attachment to this offer the amount of duty (i) applicable if a duty-free entry certificate was *not* issued (for Canadian end products only) or (ii) included in each offered price (for all other offers of foreign end products). If no duty is specified, the differential in GSAR 525.105–70(c)(2)(i) will be applied to the offered price.

Item No.	Unit	Amount of duty (in dollars and cents)

(End of Provision)

552.225–71 Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware.

As prescribed in 525.105–71(c), insert the following clause:

Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware (XXX 1989)

(a) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools or stainless steel flatware that are domestic end products. Pursuant to the requirements of the current Department of Defense Appropriations Act, GSA has determined, in accordance with Section 6–104.4 of the Armed Services Procurement Regulation (6/15/70, that it is in the national interest to reject foreign products. As used in this clause—

(1) A "domestic end product" is any hand or measuring tool, except for an electric or air-motor driven hand tool, or stainless steel flatware, wholly produced or manufactured, including all components, in the United States or its possessions; or

(2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.

(b) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this clause. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

9. Section 552.225–72 is revised to read as follows:

552.225–72 Eligible products from nondesignated countries.

As prescribed in 525.407, insert the following clause:

Eligible Products From Nondesignated Countries Waiver (XXX 1989)

(a) In accordance with the Trade Agreements Act of 1979 and 48 CFR 25.402(b), no eligible product which originates in a nondesignated country may be purchased by a Federal agency. However, this restriction may be waived before award when it is determined to be in the national interest. Accordingly, offers to furnish products originating in a nondesignated country may be submitted in response to this solicitation and will be considered for award if a waiver is obtained from the U.S. Trade Representative or a designee (19 U.S.C. 2512) on the basis that:

(1) No responsive bid or technically acceptable offer from a responsible offeror is received offering U.S. or designated country end products (48 CFR 52.225–8 and 52.225–9); or

(2) Responsible offerors do not offer a sufficient quantity to meet the Government's requirements.

(b) The determination to seek a waiver is at the sole discretion of the acquiring activity, and the granting of such waiver will be at the sole discretion of the U.S. Trade Representative or designee. (48 CFR 525.402.)

(End of Clause)

552.225–73 and 552.225–74 [Removed]

10. Sections 552.225–73 and 552.225–74 are removed.

11. Section 552.246–17 is added to read as follows:

552.246–17 Warranty of supplies of a noncomplex nature.

As prescribed in 546.710(a), insert the following clause:

Warranty of Supplies of a Noncomplex Nature (XXX 1989) (DEVIATION FAR 52.246–17)

(a) Definitions. "Acceptance," as used in this clause, means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

"Correction," as used in this clause, means the elimination of a defect.

"Supplies," as used in this clause, means the end item furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____[1]—

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements for this contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within _____[2]

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements, of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances. When the nature of the defect in the nonconforming item is such that the defect affects an entire batch or lot of material, then the equitable price adjustment shall apply to the entire batch or lot of material from which the nonconforming item was taken.

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[1] Contracting Officer shall state the specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable event or periods of time.

[2] Contracting Officer shall insert specific period of time; e.g. "45 days of the last delivery under this contract," or "45 days after discovery of the defect"). The number of days specified shall be no less than 30.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; *provided,* that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under the clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.

(C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of the notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price for all nonconforming supplies, including batch or lot materials which have either been consumed or other disposition has been made. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) Unless otherwise provided, this warranty is applicable both within and outside the continental limits of the United States.

(7) In addition to other marking requirements of this contract, the Contractor shall stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The marking should briefly include (i) a statement that the warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) who to notify if the supplies are found to be defective.

(End of Clause)

Alternate I (XXX 1989)

If commercial items are to be acquired, substitute the following for paragraph (b)(1) of the basic clause and delete paragraph (b)(4) of the basic clause.

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants for _____ all supplies furnished—

(i) Are of a quality to pass without objection in the trade under the contract description;

(ii) Are fit for the ordinary purposes for which the supplies are used;

(iii) Are within the variations permitted by the contract, and are of an even kind, quality, and quantity within each unit and among all units;

(iv) Are adequately contained, packaged, and marked as the contract may require; and

(v) Conform to the promises or affirmations of fact made on the container.

12. Sections 552.246–73 and 552.246–74 are added to read as follows:

552.246-73 Warranty—multiple award schedule.

As prescribed in 546.710(b), insert the following clause:

Warranty—Multiple Award Schedule (XXX 1989)

The Contractor's standard commercial warranty as stated in the Contractor's commercial pricelist will apply to this contract if its warranty is equal to or better than the warranty required by 552.246–17 (Alternate I).

(End of clause)

552.246-74 Warranty—international multiple award schedule.

As prescribed in 546.710(c), insert the following clause:

Warranty—International Multiple Award Schedule (XXX 1989)

Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the commercial pricelist applies to this contract, except: (a, the Contractor shall provide, at a minimum, a warranty on all nonconsumable parts for a period of 90 days from the date that the Government accepts the product; (b) parts and labor required under the warranty provisions shall be supplied free of charge; (c) transportation costs of returning the products to and from the repair facility, or the costs involved with contractor personnel traveling to the Government facility for the purpose of repairing the product onsite shall be borne by the Contractor during the 90 day warranty period.

(End of Clause)

Dated: February 14, 1989.

Richard H. Hopf, III

Associate Administrator for Acquisition Policy.

[FR Doc. 89–4943 Filed 2–3–89; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1016

[Ex Parte No. 55 (Sub No. 52)]

Special Procedures Governing The Recovery of Expenses by Parties to Commission Adjudicatory Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Extension of comment period.

SUMMARY: On February 21, 1989, at 54 FR 7454, the Commission issued proposed rules to reflect the recodification and amendment of the Equal Access to Justice Act Pub. L. No. 99–80. 99 Stat. 183). The Commission also served a corresponding decision on February 17, 1989. Inadvertently the Commission's decision was issued without the text of the proposed rules. A notice to the parties has been issued which contains the text of the proposed rules. The comment period of this proceeding will be extended to provide sufficient time for interested persons to submit comments on our proposal.

DATE: Comments are due April 3, 1989.

ADDRESS: Send an original and 10 copies of comments referring to: Ex Parte No. 55 (Sub-No. 52) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard R. Hartley, 202–275–7786

or

Richard B. Felder, 202–275–7691

[TDO for hearing impaired: (202) 275–1721].

List of Subjects in 49 CFR Part 1016:

Claims, Equal access to justice, and Lawyers.

Decided: February 24, 1989.

By the Commission.

Noreta R. McGee,

Secretary.

[FR Doc. 89–5014 Filed 3–2–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

Bering Sea/Aleutian Islands King and Tanner Crab Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted a Fishery Management Plan for the commercial king and Tanner crab fisheries in the Bering Sea/Aleutian Islands (FMP) for Secretarial review and is requesting comments from the public. Copies of the FMP may be obtained from the address below.

DATE: Comments on the FMP should be submitted on or before May 2, 1989.

ADDRESS: All comments should be sent to Steven Pennoyer, Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802. Copies of the FMP and the environmental assessment are available upon request from the North Pacific Fishery Management Council, P.O. Box 103136 Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Raymond F. Baglin (National Marine Fisheries Service, Alaska Region), 907–586–7229.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any FMP it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the FMP, immediately publish a notice that the FMP is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the FMP.

The FMP for the commercial king and Tanner crab fisheries in the Bering Sea/Aleutian Islands culminates a 10-year effort by the Council to address the concerns of various user groups while at the same time acknowledging over 20 years of management of crab by the State of Alaska. The FMP provides the State of Alaska with the lead management role for the king and Tanner crab fisheries. Also, the FMP provides for Secretarial oversight of State preseason and inseason actions through a review and appeal procedure to ensure that State management of king crab and Tanner crab is consistent with the FMP, the Magnuson Act, and other applicable Federal law.

No Federal regulatory action is necessary to implement this FMP. The Secretary has preliminarily determined that existing State laws appear to be consistent with the FMP, the Magnuson Act, and other applicable Federal law. If the Secretary later finds that a State regulation or statute governing king or Tanner crab in the Bering Sea/Aleutian Islands is inconsistent with the FMP, the Magnuson Act, or other applicable Federal law, either as the result of an appeal or the mandatory review of measures adopted by the State Board of fisheries provided for in the FMP, he may publish a regulation in the **Federal Register** that supersedes such State regulation or statute as it applies in the EEZ.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 28, 1989.

Alan Dean Parsons,

Acting Director, Office of Fisheries Conservation and Management.

[FR Doc. 89–5016 Filed 2–28–89; 4:50 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 54, No. 41
Friday, March 3, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

National Environmental Policy Act; Revised Policy and Procedures

AGENCY: Forest Service, USDA

ACTION: Notice of interim policy and procedures.

SUMMARY: On January 23, 1989, the Secretary of Agriculture gave notice of adoption of final rules revising administrative appeal procedures for National Forest Service System plan and project decisions. The new rules at 36 CFR Part 217 introduce a new type of environmental document—a Decision Memo. In order to implement the new appeal procedures, the Forest Service must issue direction immediately to its field officers on when and how to prepare a Decision Memo. This direction is being issued as an Interim Directive to Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, and is effective February 22, 1989, to coincide with the effective date of new rules at 36 CFR Part 217.

EFFECTIVE DATE: February 22, 1989.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this policy should be addressed to David E. Ketcham, Director of Environmental Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, phone (202) 447-4708.

SUPPLEMENTARY INFORMATION: As noted in the summary, new rules governing administrative appeal of National Forest System plan and project decisions were published January 23, 1989, at 54 FR 3342-3370, and became effective February 22, 1989. The rules at 36 CFR 217.3 establish a new type of environmental document called a "Decision Memo," which is defined as a document in which a forest officer records a decision to categorically exclude a proposed action from documentation in an environmental impact statement or environmental assessment.

In order to implement the new appeal rule in a timely fashion, the Forest Service must issue direction to its employees on how and when to prepare a Decision Memo. These instructions are being issued as an Interim Directive (ID) to FSH 1909.15, Environmental Policy and Procedures Handbook, which contains the detailed guidance needed by Forest Service employees to comply with the National Environmental Policy Act (NEPA) and Council on Environmental Quality implementing regulations at 40 CFR Parts 1500-1508. As required by those rules, the Forest Service hereby given notice of the interim procedures.

Prior to issuance of the interim directive, the agency had begun a comprehensive review and revision of its NEPA policy and procedures and is in the final stages of preparing those revisions for publication in the Federal Register. Upon publication, the public will be invited to submit comments on the proposed revisions. The Decision Memo procedures now being issued as an interim directive will be included in the more comprehensive proposed revision of the agency's policy and procedure. Therefore, the agency is not requesting public comment on the interim directive at this time.

A copy of the interim directive as it is being issued in the Forest Service directive system appears at the end of this notice. In accordance with Forest Service policy, the interim directive will stay in effect up to one year unless removed.

George M. Leonard,
Associate Chief
Date: February 24, 1989.

FOREST SERVICE HANDBOOK

Washington, DC

FSH 1909.15—Environmental Policy and Procedures Handbook

Interim Directive No. 2.
February 28, 1989.
Duration: One year.
Chapter: 20—Environmental Analysis.
Posting Notice: Last ID was No. 1, which has expired.

On February 22, 1989, the new administrative appeal procedures at 36 CFR Part 217 becamse effective. Section 217.3 of the new rules proivdes that decisions documented in a Decision Memo, Decision Notice, or Record of Decision may be appealed under the rules in Part 217. A Decision Memo is a new type of environmental document to be prepared by Forest Service employees. In order to implement the new appeal rules, it is necessary to provide interim direction on when a Decision Memo should be prepared and on the format and content of this type of decision document.

For ease of use and consistency of implementation, this interim directive (ID) also integrates guidance on categorical exlcusions with the guidance on how and when to prepare a Decision Memo. Specifically, this ID (1) enumerates the categories established by the Department of Agriculture at 7 CFR 1b.3 as categorically excluded from documentation in an EIS or EA; (2) identifies the categories of actions for which a project file and Decision Memo must be prepared; (3) defines the content of a project file; and (4) requires notice of a decision to proceed with an action that has been categorically excluded from documentation. The direction on categorical exclusions is identical to that issued in ID No. 16 to FSM 1950, dated August, 1988, which is being removed by separate posting notice.

26—Categories of Actions Excluded From Documentation in an EIS or EA. (40 CFR 1508.4)

26.1—Categories for Whcih a Project File and a Decision Memo Are Not Required. A project file is not required for the categories of actions listed in sections 26.1a and 26.1b. However, a project file may be established for such an action at the discretion of the responsible official.

26.1a—Categories Established by the Secretary. The rules at 7 CFR 1b.3 exclude from documentation in an environmental impact statement (EIS) or an environmental assessment (EA) the following categories of actions:

§ 1b.3 Categorical exclusions.

(a) The following are categories of activities which have been determined not to have a significant effect on the human environment and are excluded from the preparation of environmental assessments (EA's) or environmental impact statements (EIS's), unless

individual agency procedures prescribe otherwise.

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation;

(7) Activities related to trade representation and market development activities abroad.

26.1b—Categories Established by the Chief. The following categories of routine administrative and maintenance actions normally do not individually or cumulatively have a significant effect (40 CFR 1508.22) on the quality of the human environment and, therefore, may be categorically excluded from documentation in an environmental impact statement (EIS) or environmental assessment (EA):

1. Administrative actions, such as road and area closures; restrictions on travel or use, such as camping, boating, or hunting; and posting signs and markers.

2. Construction of low-impact facilities or improvements, such as auxiliary support buildings or other structures; picnic areas and campgrounds; temporary and other low-standard roads, such as traffic service level "D" roads (FSH 7709.56); and trails.

3. Repair and maintenance activities, such as on buildings, grounds, trails, rights-of-way, and range improvements.

26.2—Categories of Actions for Which a Project File and a Decision Memo Are Required. Maintain a project file and prepare a Decision Memo for the following categories of proposed actions:

1. Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood and miscellaneous forest product sales; salvage, thinning, and small harvest cuts of less than 100,000 board feet or less than 10 acres; site preparation; and planting and seeding.

2. Low-impact range management activities, such as fencing, seeding, and installing water facilities.

3. Issuance or modification of authorizations or agreements for such uses of lands or facilities as road maintenance and additional use of existing roads, rights-of-way, and easements.

4. Low-impact pest management activities, such as suppressing nuisance insects and poisonous plants in campgrounds and picnic areas; controlling cone and seed insects in seed orchards; and fumigating to control weeds in nurseries.

5. Mineral and energy activities of limited size, duration, and degree of disturbance, such as preliminary exploration and removal of small mineral samples.

6. Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.

7. Transfer of interests in land, such as sales, exchanges, or interchanges pursuant to the Small Tracts Act; purchases and gifts; and small transfers and trades with other Federal agencies.

26.2a—Content of Project File. As a minimum, a project file on a proposed action as listed in sec. 26.2 should include:

1. A list of the names of interested and affected people, groups, and agencies contacted during scoping;

2. The results of scoping and the subsequent environmental analysis;

3. A copy of the Decision Memo (sec. 27);

4. A list of the people, agencies, and groups notified of the decision;

5. Other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded.

27—Documentation of Decisions in a Decision Memo

A Decision Memo is not required if a proposed action has been categorically excluded from documentation in an environmental impact statement or an environmental assessment under categories in sections 26.1a (7 CFR 1b.3) or section 26.1b of this chapter. However, interested and affected persons must be informed in an appropriate manner (sec. 11.5).

A Decision Memo is required if the proposed action has been categorically excluded from documentation in an EIS or EA under the categories listed in section 26.2. These decisions are subject to review under 36 CFR 217.6.

27.1—Format and Content. The format of the Decision Memo is not intended to replicate the format of a correspondence memorandum (FSH 6209.12). Generally, Decision Memos should conform to the following format and content although sections may be combined or rearranged in the interest of clarity and brevity.

1. *Heading.* The heading consists of the following elements:

(a) Title of document—"Decision Memo."

(b) The title of the proposed action.

(c) The location of the proposed action (including the Forest Service administrative unit, county, and state). In some cases, including the legal land description is appropriate.

2. *Proposed action.* Describe the proposed action, the decision to be implemented, and reasons for making the decision.

3. *Scoping and public involvement.* Describe the scoping process used and the issues identified. It may be appropriate to identify or refer to the interested and affected agencies, organizations, and persons contacted.

4. *Reasons for categorically excluding the proposed action.* This section includes:

(a) Identification of the category (sec. 26) into which the proposed action falls.

(b) Finding that no extraordinary circumstances exist that might cause the action to have significant effects.

5. *Finding required by other laws.* Include any findings required by any other laws. For example, findings of consistency with the forest plan, suitability, and vegetation management required by the National Forest Management Act (FSM 1922.41 and FSH 1909.12, sec. 5.3).

6. *Implementation date.* Include the date when the responsible official intends to implement the decision (sec. 51).

7. *Administrative review or appeal opportunities.* State whether the decision is subject to review or appeal, cite the applicable regulations (36 CFR Part 217), and identify when and where to file a request for review or appeal.

8. *Contact person.* Include the name, address, and phone number of the Forest Service employee who can supply further information about the decision.

9. *Signature and date.* The responsible official must sign and date the Decision Memo on the date the date the decision is made.

27.2—Notice and Distribution of Decision Memo. Distribute the Decision

Memo in a manner designed to inform agencies, organizations, and persons interested in or affected by the proposed action.

1. For decisions subject to appeal under 36 CFR Part 217, the responsible official shall promptly mail the Decision Memo to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

2. The responsible official may provide other forms of notice, including legal notice in newspapers of general circulation in the area where the proposed action is to be implemented

When required by E.O. 12372, send copies to the State Single Point of Contact or, in cases where a State has elected not to establish a Single Point of Contact, the State official(s) involved.

[FR Doc. 89-4971 Filed 3-2-89; 8:45 am]

BILLING CODE 3410-71-M

COMMISSION ON CIVIL RIGHTS

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:30 p.m., on March 9. 1989 at the Ramada Inn-Downtown, 420 East 6th Street, Topeka, Kansas. The purpose of the meeting is to review the status of current Committee projects and discuss issues which are possible subjects for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett A. Loomis, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 7, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-5040 Filed 3-2-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-007]

Barium Chloride from the People's Republic of China; Termination of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative reviews.

SUMMARY: On November 18, 1987 and December 5, 1988, the Department of Commerce initiated administrative reviews of the antidumping duty order on barium chloride from the People's Republic of China. The Department has now determined to terminate those reviews.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601/2923

SUPPLEMENTARY INFORMATION:

Background

On November 18, 1987 and December 5, 1988, in response to requests received from the petitioner in this case, the Department of Commerce published notices of initiation of administrative review of the antidumping duty order on barium chloride from the People's Republic of China (52 FR 44161 and 53 FR 48951). Those notices stated that we would review entries from Sinochem during the periods October 1, 1986 through September 30, 1987 and October 1, 1987 through September 30, 1988, respectively

The petitioner subsequently withdrew its requests for review on January 5, 1989. Accordingly, the Department has determined to terminate the reviews.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and section 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: February 27, 1989.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89-5013 Filed 3-2-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Kentucky, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-228. University of Kentucky, Lexington, KY 40536-0203. *Instrument:* Electron Microscope with Accessories, Model EM 902PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 53 FR 30084, August 10, 1988. *Instrument Ordered:* April 15, 1988.

Docket Number: 88-229. *Applicant:* University of Virginia, Charlottesville, VA 22908. *Instrument:* Electron Microscope with Accessories, Model CEM 902. *Manufacturer:* Carl Zeiss, West Germany. *Intended Use:* See notice at 53 FR 30084, August 10, 1988. *Instrument Ordered:* April 12, 1988.

Docket Numbers: 88-230 and 88-232. *Applicant:* University of Kentucky, Lexington, KY 40536-0084. *Instrument:* Electron Microscope, Models H-7000-3T and H-7000. *Manufacturer:* Hitachi Scientific, Japan. *Intended Use:* See notices at 53 FR 30084, August 10, 1988. *Instruments Ordered:* December 23, 1987.

Docket Number: 88-233. *Applicant:* Carnegie Mellon University, Pittsburgh, PA 15213. *Instrument:* Electron Microscope, Model HB501. *Manufacturer:* VG Microscopes, Ltd., United Kingdom. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Instrument Ordered:* September 29, 1987

Docket Number: 88-235. *Applicant:* University of Pennsylvania, Philadelphia, PA 19104-6058. *Instrument:* Electron Microscope, Model JEM-1200/EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Instrument Ordered:* January 15, 1988.

Docket Number: 88-236. *Applicant:* Baylor College of Medicine, Houston, TX 77030. *Instrument:* Electron Microscope, Model JEM-1200/EX/SEG/DP/DP. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 53 FR 31077, August 17, 1988. *Instrument Ordered:* April 21, 1988.

Docket Number: 88-239. *Applicant:* Occidental College, Los Angeles, CA 90041. *Instrument:* Electron Microscope, Model EM 109. *Manufacturer:* Carl

Zeiss, West Germany. *Intended Use:* See notice at 53 FR 32419, August 25, 1988. *Instrument Ordered:* May 23, 1988.

Docket Number: 88-243. *Applicant:* Walter Reed Army Institute of Research, Washington, DC 20307-5100. *Instrument:* Electron Microscope, Model CM-12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 53 FR 32420, August 25, 1988. *Instrument Ordered:* March 18, 1988.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-5010 Filed 3-2-89; 8:45 am]

BILLING CODE 3510-DS-M

Carleton College et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Material Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-053. *Applicant:* Carleton College, One North College Street, Northfield, MN 55057. *Instrument:* Laser System (Excimer Laser and Excimer-pumped Dye Laser). *manufacturer:* Lumonics Inc., Canada. *Intended Use:* The instrument will be used for studies of metal carbonyls and related organo-metallic compounds. These studies will involve investigations of the fundamental dissociation patterns and spectroscopic levels of these compounds when subjected to intense laser light in the visible and ultraviolet regions of the spectrum. In addition, the instrument will be used to demonstrate modern instrumentation in physical chemistry in the course Chemistry 47, Advanced Lab III. *Application Received by Commissioner of Customs:* January 6, 1989.

Docket Number: 89-054. *Applicant:* Pennsylvania State University Department of Geosciences, 242 Deike Building, University Park, PA 16802. *Instrument:* Mass Spectrometer. *Manufacturer:* VG Isogas Limited, United Kingdom. *Intended Use:* The instrument will be used for studies of minerals, rocks, waters, solutions, gases, and organic compounds from a variety of geologic environments, and solids, solutions and gaseous materials synthesized in the laboratory. Experiments will be conducted with the objective of unraveling the laws governing the variation of isotopic compositions of H, C, O, S, and N in nature, and to understand the details of various geological processes (such as the formation of precious metal ore deposits, formation and migration of oils and natural gasses, evolution of the Earth's atmosphere and oceans, generation and evolution of magmas). In addition the instrument will be used in Geoscience courses to teach students to understand the concepts and materials discussed in the course. *Application Received by Commissioner of Customs:* January 9, 1989.

Docket Number: 89-055. *Applicant:* University of Nebraska Medical Center, Meyer Children's Rehabilitation Institute, 444 South 44th Street, Omaha, NE 68131. *Instrument:* Computerized Videographic Movement Analysis System, Model WATSMART. *Manufacturer:* Northern Digital, Canada. *Intended Use:* The instrument will be used for the study of human movement with primary application for walking. The objective of the experiments will be to examine treatment effects and develop alternatives such as changing types of braces a child or adult may wear during walking or provide input to orthopedic surgeons to develop a surgery plan. The instrument will also be used for educational purposes in a physical therapy curriculum. *Application Received by Commissioner of Customs:* January 10, 1989.

Docket Number: 89-056. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4812. *Instrument:* Mass Spectrometer, Model, Series 800. *Manufacturer:* Kratos, United Kingdom. *Intended Use:* The instrument will be used to study the reaction between water and nuclear waste glasses and to monitor the behavior of actinide elements during the reaction process. *Application Received by Commissioner of Customs:* January 10, 1989.

Docket Number: 89-057 *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4812. *Instrument:* Raman Spectrometer with Microscope Attachment. *Manufacturer:* Jobin-Yvon, France, *Intended Use:* The instrument will be used for investigations of ceramic thin films grown with the MOCVD technique. Many of these materials will have structural phase transformations. *Application Received by Commissioner of Customs:* January 11, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-5011 Filed 3-2-89; 8:45 am]

BILLING CODE 3510-DS-M

Virginia Military Institute, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-253. *Applicant:* Virginia Military Institute, Lexington, VA 24450. *Instrument:* Terrain Conductivity Meter, Model EM-34-3-DL. *Manufacturer:* Geonics, Ltd., Canada.

Docket Number: 88-254. *Applicant:* U.S. Geological Survey, Columbus, OH 43212. *Instrument:* Ground Conductivity Electromagnetic System and Data Logger, Model EM-34-2-DL and EM-55. *Manufacturer:* GISCO, Canada. *Intended Use:* See notice at 53 FR 37017, September 23, 1988. *Reasons for this Decision:* The foreign instrument provides for in situ measurement of ground conductivity in milli-ohms per meter.

Docket Number: 88-237. *Applicant:* Arizona State University. Tempe, AZ 85287. *Instrument:* Optical Microscope Stage System. *Manufacturer:* Autoscan Systems Pty. Ltd., Australia. *Intended*

Use: See notice at 53 FR 31077, August 17, 1988. *Reasons for this Decision:* The foreign instrument is an automated microscope stage (accessory) providing automatic location of corresponding points from either samples or replica sites.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-5012 Filed 3-2-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1989 commodities to be produced by a workshop for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 3, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. On February 17, 1989, (54 FR 7248) these commodities were published with incorrect national stock numbers. The commodities are republished by this action. If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodities listed below from a workshop for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Strap, Webbing
- 5340-00-477-3700
- 5340-00-494-8238
- 5340-00-494-8239

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-4979 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Addition and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 3, 1989.

ADDRESS: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 4, 1988, and January 6, 1989, the Committee for Purchase From the Blind and Other Severely Handicapped published notices (53 FR 44646 and 54 FR 458) of proposed addition to and deletion from Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

Addition

No comments were received concerning the proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Addition

Accordingly, the following commodity is hereby added to Procurement List 1989:

Index, Elevation
- 1005-01-134-3621

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from Procurement List 1989:

Pin, Tent, Wood
- 8340-00-261-9752

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-4980 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989 Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and a deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1989 commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON ON BEFORE: April 3, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: B.L. Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Commodities

Dressing, First Aid, Field, Camouflaged

6510-00-201-7425

6510-00-201-7430

Deletion

It is proposed to delete the following service from Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Furniture Rehabilitation (Metal)

Naval Ordnance Station

Louisville, Kentucky

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-4981 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Army Subgroup on Low Observable Technologies will meet in closed session on April 26-27, 1989 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine and provide advice regarding Army activities in the area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

February 28, 1989.

P. H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-5018 Filed 3-2-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: March 20, 1989.

Time of Meeting: 0900-1700 hours.

Place: Aberdeen Proving Ground, Maryland.

Agenda: The Army Science Board Ad Hoc Subgroup for Space Systems will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-4996 Filed 3-2-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of The Committee: Army Science Board (ASB).

Date of Meeting: March 23-24, 1989.

Time of Meeting: 0900-1630 hours each day.

Place: Aberdeen Proving Ground, MD.

Agenda: The Army Science Board Subgroup on Toxic and Hazardous Waste Management will conduct its third meeting. Briefings will be conducted by various members of DOD and EPA in respect to the Terms of Reference. Past, current, and planned actions will be discussed as they relate to the Terms of Reference. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-4997 Filed 3-2-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning the Make or Buy Program.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition and Regulatory Policy, (202) 523-3781.

SUPPLEMENTARY INFORMATION:

a. Purpose

Price, performance, and/or implementation of socioeconomic policies may be affected by make-or-buy decisions under certain Government prime contracts.

Accordingly,Subpart 15.7, Make-or-Buy Programs, of the Federal Acquisition Regulation (FAR)—

(a) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(b) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(c) Prescribes the contract clause at FAR 52.215-21, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy programs.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *200;* responses per respondent, *3;* total annual responses, *600;* hours per response, *8;* and total response burden hours, *4,800.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0078, Make or Buy Programs.

Dated: February 24, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-4945 Filed 3-2-89; 8:45 am]

BILLING CODE 6820-JC-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No. 84.026]

New Award for Government Subsidization for the Manufacture and Distribution of a Line 21 Decoder Under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year 1989

Purpose of Program: Provides Federal financial assistance for projects designed to promote the educational advancement of persons who are handicapped by providing assistance for: (1) Conducting research in the use of education media and technology for persons with handicaps; (b) producing and distributing educational media for use of persons with handicaps, their parents, their actual and potential employers, and other persons directly involved in work for the advancement of person with handicaps; and (c) training persons in the use of educational media for the instruction of persons with handicaps. Awards under this program are authorized under Part F of the Education of the Handicapped Act, as amended.

Deadline for Transmittal of Applications: 4/19/89.

Deadline for Intergovernmental Review: 6/19/89.

Applications Available: 3/6/89.

Available Funds: $1,000,000.

Estimated Number of Awards: 1.

Note.—The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74, 75, 77, 79, 80 and 85, and (b) the Educational Media Research, Production, Distribution, and Training Program, 34 CFR 332.

It is the policy of the Department of Education not to solicit applications before the production of a notice of final priority. However, in this case it is essential to solicit applications for this competition on the basis of the notice of proposed funding priority published in the **Federal Register** on January 5, 1989 at 54 FR 375 because it is necessary to maintain a continuing supply of Line 21 decoders.

Further, the Secretary has not received any substantive comments on the notice of final funding priority and does not anticipate making any substantive changes in the final priority. If significant changes are made in the notice of final funding priority, applicants will be given an opportunity to revise or resubmit their applications.

For Applications or Information Contact: Joseph Clair, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 4622—M/S 2466), Washington, DC 20202.

Program Authority: 20 U.S.C. 1451, 1452.

Dated: February 28, 1989.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitive Services.

(Catalog of Federal Domestic Assistance No. 84.026, Educational Media Research, Production, Distribution, and Training.)

[FR Doc. 89-5051 Filed 3-2-89; 8:45 am]

BILLING CODE 4000-01-M

(CFDA NO. 84.097)

Law School Clinical Experience Program; New Awards for Fiscal Year 1989

Purpose of Program: Provides grants to accredited law schools to establish or expand programs of clinical experience for students in the practice of law.

Deadline for transmittal of Applications: April 21, 1989

Applications Available: March 13, 1989

Available Funds: $3,952,000—The program legislation would permit the Secretary to pay up to 90 percent of the cost of projects at law schools. (20 U.S.C. 1134s(a)). The program regulations at 34 CFR 639.40(a)(2) permit the Secretary to establish annually a lower maximum Federal share. The maximum Federal share will be set at 50 percent for Fiscal Year 1989.

Estimated Range of Awards: $26,520—$99,840

Estimated Average Size of Awards: $76,000

Estimated Number of Awards: 52

Project Period: 12 months

Applicable Regulations: (a) The Law School Clinical Experience Program Regulations, 34 CFR Part 639. (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 85.

Priorities: Under the Education Department General Administration Regulations (EDGAR) in 34 CFR 75.105(c)(3) and as described in 34 CFR 639.11, the Secretary gives an absolute preference to the following priorities.

1. Provide legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom; and

2. Provide service to persons who have difficulty in gaining access to legal representation.

For Applications or Information Contact: Dr. Charles H. Miller on (202) 732-4395 or Mrs. Barbara J. Harvey on (202) 732-4863, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW, ROB-3, Washington, DC 20202-5251.

Program Authority: 20 U.S.C. 1134s-1134t

Dated: February 28, 1989.

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89-5052 Filed 3-2-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Coordinating Subcommittee on Petroleum Storage & Transportation Committee on Petroleum Storage & Transportation National Petroleum Council; Open Meeting

Notice is hereby given of the foliowing meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the Committee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and Time: Friday, March 10, 1989, 8:00 a.m.

Place: Hyatt Regency DFW, Universe Room, International Parkway, Dallas/Fort Worth Airport, TX.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting: Review the draft of Volume I, *Summary.*

Tentative Agenda:

—Opening remarks by the Chairman and Government Cochairman.
—Review the draft of Volume I, *Summary.*
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5-days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Jeremiah E. Walsh, Jr.,

Acting Principal Deputy Assistant Secretary Fossil Energy.

[FR Doc. 89–5045 Filed 3–2–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–70–NG]

Atlantic Richfield Co.; Conditional Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Department of Energy.

ACTION: Notice of a conditional order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting Atlantic Richfield Company (ARCO) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88–70–NG conditionally authorizes ARCO to import up to 25 Bcf per year of Canadian natural gas over a two-year period for use as fuel in its oil refinery located in Ferndale, Washington.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 27, 1989.

J. Allen Wampler,

Assistant Secretary Fossil Energy.

[FR Doc. 89–5046 Filed 3–2–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP89–867–000, et al.]

Trunkline Gas Co., et al.; Natural gas certificate filings

February 27, 1989.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP89–867–000]

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–867–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for CSX NGL Corporation (CSX), a shipper and end user of natural gas, under Trunkline's blanket certificate issued in Docket No. CP86–586–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport up to 50,000 dekatherms (dkt) of natural gas equivalent per day on an interruptible basis on behalf of CSX pursuant to a transportation agreement dated November 23, 1988, between Trunkline and CSX. Trunkline would receive the gas at various existing points of receipt on its system in Texas, offshore Texas, Louisiana, offshore Louisiana, Tennessee and Illinois and deliver equivalent volumes, less fuel used and unaccounted for line loss, to CSX, Unocal in Vermilion Parish, Louisiana.

Trunkline states that the estimated daily and annual quantities would be 10,000 dkt and 3,650,000 dkt, respectively. Service under § 284.223(a) commenced on January 13, 1988, as reported in Docket No. ST89–2169–000, it is stated.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP89–864–000]

Take notice that on February 21, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP89–864–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service on behalf of Texaco Gas marketing (Texaco), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to an interruptible gas transportation agreement dated July 25, 1988, as amended December 16, 1988, United proposes to transport up to 103,000 MMBtu of natural gas per day from thirty-five (35) existing points of receipt located in Texas to fifteen (15) existing points of delivery located in Louisiana, Mississippi and Texas. Texaco has informed United that it expects to have the full 103,000 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 37,595,000 MMBtu. United advises that the transportation service commenced on December 21, 1988, as reported in Docket No. ST89–2165, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89–839–000]

Take notice that on February 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas, 77251–

1478, filed in Docket No. CP89–839–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, for Enron Gas Marketing, Inc. (Enron), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport up to a maximum of 103,000 MMBtu of natural gas per day for Enron from an existing interconnection between United and Sea Robin Pipeline Company near Erath, Vermilion Parish, Louisiana to the existing interconnection between United and Florida Gas Transmission Company at Arnaudville, St. Landry Parish, Louisiana. United anticipates transporting up to 103,000 MMBtu on a peak day and average day, and 37,595,000 MMBtu annually for Enron. United explains that service commenced January 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1873.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP89–871–000]

Take notice that on February 21, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP89–871–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Anadarko Trading Company (Anadarko), under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 dt of natural gas per day for Anadarko from receipt points located in Illinois, Louisiana, Tennessee and Texas to a delivery point of Bridgeline Gas located in St. Mary Parish, Louisiana. Trunkline anticipates transporting, on an average day 100,000 dt and an annual volume of 36,500,000 dt.

Trunkline states that the transportation of natural gas for Anadarko commenced January 6, 1989, as reported in Docket No. ST89–2134–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86–586–000.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP89–715–001]

Take notice that on January 30, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–715–000, as supplemented on February 21, 1989, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for LTV Steel Company, Inc. (LTV), an end-user, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Notice of the instant proposal was issued on February 3, 1989. By its filing received on February 21, 1989, Natural has amended its request in accordance with a contract amendment dated February 6, 1989, to provide for:

(1) An increase in its firm transportation service to a maximum of 25,000 MMBtu equivalent of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS) for LTV.

(2)(a) The replacement of the secondary receipt point in Cameron Parish, Louisiana, with one in Jefferson County, Texas,

(b) Adding a primary delivery point located on the border of Kankakee County, Illinois, and Lake County, Indiana, and

(c) Adding a secondary delivery point in Bureau County, Illinois.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP89–878–000]

Take notice that on February 22, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–878–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Natural Gas Clearinghouse Inc. (NGC), a marketer, under the blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated January 13, 1989, under its Rate Schedule ITS, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for NGC. Natural states that it would transport the gas from an existing interconnection between Natural and Colorado Interstate Gas Company in Beaver County, Oklahoma, and deliver such gas to an existing interconnection with Northern Natural Gas Company in Iowa.

Natural advises that service under § 284.223(a) commenced January 14, 1989, as reported in Docket No. ST89–2316. Natural further advises that it would transport 7,500 MMBtu on an average day and 2,737,500 MMBtu annually.

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–5008 Filed 3–2–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER89–222–000]

Gulf Power Co.; Filing

February 27, 1989.

Take notice that on January 17, 1989, Gulf Power Company (Gulf Power) tendered for filing Gulf Power's 1989 Informational Filing of the

Interconnection Agreement and Transmission Service Agreement between Gulf Power and Bay Resources Management, Inc. (BRMI).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 89-5004 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-295-000, et al.]

Kimball Resources, Inc., et al., Applications for Blanket Certificates With Pregranted Abandonment [1]

February 28, 1989.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorization, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Under the procedure herein provided for, unless othersie advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CI89-295-000.....	2-6-89	Kimbal Resources, Inc., Metropolitan Plaza 1, 10370 Richmond Avenue, Suit 500, Houston, Texas 77042.
CI89-302-000.....	2-13-89	Chevron U.S.A. Inc., P.O. Box 3725, Houston, Texas 77253-3725.

[FR Doc. 89-5005 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89-5-000]

Omni Exploration, Inc. and Omni Drilling Partnership No. 1978-2; Petition for Adjustment

February 27, 1989.

Take notice that on February 13, 1989, Omni Exploration Inc. and Omni Drilling Partnership No. 1978-2 (Omni) filed a motion for reconsideration of the December 21, 1988 order issued by the Director of the Office of Pipeline and Producer Regulation (Director) in *Palmco Management Co.*, Docket No. SA88-14-000, 45 FERC ¶ 62,255 (1988). Omni claims that the Director's order requires it to pay amounts in addition to those already paid pursuant to Order Nos. 399, 399-A, and 399-B or which have been waived and discharged by order to the United States Bankruptcy Court for the Eastern District of Pennsylvania. Omni seeks adjustment from the Director's order holding Omni responsible for the Btu refunds.

The procedures applicable to the conduct of this adjustment proceeding are found in subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Rule 214. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 89-5006 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-14-001 and Docket No. SA89-5-000]

Palmco Management Co., Omni Exploration, Inc. and Omni Drilling Partnership No. 1978-2; Assignment of New Docket Number

February 27, 1989

Take notice that on January 27, 1989, Omni Exploration, Inc., and Omni Drilling Partnership No. 1978-2 (Omni) filed with the Commission pursuant to Rule 1110 of the Commission's rules of practice and procedure, 18 CFR 385.1110 (1988), a letter-petition requesting review of the order issued by the Director of the Office of Pipeline and Producer Regulation on December 21, 1988, granting Palmco's petition for adjustment relief in Docket No. SA88-14-000, 45 FERC ¶ 62,255 (1988). On February 6, 1989, the Commission designated a presiding officer, who stayed certain procedural requirements until after Omni submitted further information in support of its letter-petition.

On February 13, 1989, the Commission received Omni's motion for reconsideration of the Director's December 21 order. In view of the new facts and arguments set forth in the motion and for administrative convenience, the Commission will treat Omni's filing as a separate petition for adjustment and assign it Docket No. SA89-5-000. The merits of Omni's motion will be fully addressed in the new docket. The Commission will provide notice of Omni's request for adjustment and subsequently issue an order addressing the merits.

Lois D. Cashell,

Secretary.

[FR Doc. 89-5007 Filed 3-2-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3532-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 13, 1989 through February 17, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 22, 1988 (53 FR 13318).

Draft EISs

ERP No.: D-AFS-E65037, Rating EC2, Appalachian Mountains National Forests Vegetation Management Plan, Implementation, AL, GA, KY, NC, SC, TN, VA and WV.

Summary: EPA agrees environmental concerns has been identified which should be addressed in the final EIS. Due to the evolving nature of groundwater protection and endangered species guidelines, EPA recommends establishment of a process for ongoing consultation with the states, U.S. EPA and the U.S. Fish and Wildlife Service to ensure the regulatory consistency of the selected management measures.

ERP No.: D-BLM-C67000-NM, Rating EC2, Molycorp Guadulupe Mountain Tailings Disposal Facility, Construction, Operation and Closure, Plan of Operation Approval, Tasco County, NM.

Summary: EPA expressed environmental concerns with the proposed action in the areas of air and water quality impact and is requesting additional information on windblown tailings dust stabilization, water quality impact assessment and alternative analysis.

ERP No.: DS-COE-C32008-NJ, Rating EC2, Great Egg Harbor Inlet and Peck Beach Erosion Control and Flood Protection, Implementation, Updated Information and Detailed Analysis, Ocean City, Cape May County, NJ.

Summary: EPA has concerns regarding potential impacts to water quality and benthos. The results of the planned test sampling should be included in the final EIS. The results of the sampling should provide the additional information necessary to resolve EPA's concerns.

ERP No.: D-NAS-E12004-00, Rating EC2, Galileo Mission Project, Galileo Spacecraft Preparation and Operation Plan, Implementation, Solar System Exploration Program (Tier 2).

Summary: EPA has some environmental concerns about certain procedural aspects of the emergency response and clean-up measures.

Final EISs

ERP No.: F-AFS-H67001-MO, Mark Twain National Forest, Hardrock Mineral Leasing, Approval and Issuance of Leases, Oregon, Carter and Shannon Counties, MO.

Summary: EPA does not object to the proposed project provided that the Forest Service or the Bureau of Land Management will prepare site-specific EISs at such time as mining in the subject area is proposed.

Other Reviews

ERP No.: A-IBR-A31048-00, Proposed Renewal of Water Contracts for the Friant Unit of the Central Valley Project; Predecision Referral Statement.

Summary: EPA has referred to the Council on Environmental Quality the Bureau of Reclamation's proposed renewal of the Orange Cove, California water contract. The contract renewal would have commited to existing uses 1.5 million acre-feet of Central Valley Project water for the next forty years. The referral expressed the belief that unsatisfactory environmental results might occur if the long-term commitment of water is made and that assessment of environmental effects and the implementation of measures to avoid or mitigate those effects is required both by the National Environmental Policy Act (NEPA) and sound public policy. The referral concluded that the Bureau of Reclamation water contract renewal would result in an irretrievable long-term commitment of water use without benefit of an EIS which would be a violation of the purposes and intent of NEPA.

Dated: February 28, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-5047 Filed 3-2-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3532-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed February 20, 1989 Through February 24, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890042, Final, EPA, AS, Tutuila Island Offshore Ocean Disposal Site Designation for Fish Cannery Waste, AS, Due: April 3, 1989, Contact: Patrick Cotter (415) 974-0257.

EIS No. 890043, Draft, AFS, OR, Mount Hood Meadows Ski Area Additional Development and Expansion, Master Plan Approval, Special Use Permits and 404 Permit, Mount Hood National Forest, Hood River County, OR, Due: April 21, 1989, Contact: Douglas E. Gochnour (503) 666-0700.

Amended Notices

EIS No. 880430, Draft, IBR, CA, American River Service Area Water Contracting Program, Water Supply Project for Agricultural Municipal and Industrial Uses, Long-Term Contracting, San Joaquin, Sacramento and Placer Counties, CA, Due: April 3, 1989, Contact: Bill Payne (916) 978-5488.

Published FR 01-06-89—Review period extended.

EIS No. 880431, Draft, IBR, CA, Sacramento River Water Service Area Contracting Program, Water Supply Project for Municipal and Industrial, Wildlife Refuge and Agricultural Uses, Long-Term Contracting, Shasta, Tehama, Yolo, Solano, Colusa and Solano Counties, CA, Due: April 3, 1989, Contact: Bill Payne (916) 978-5488.

Published FR 01-06-89—Review period extended.

EIS No. 880432, Draft, IBR, CA, Delta Export Service Area Water Contracting Program, Water Supply Project for Agricultural, Municipal and Industrial and Wildlife Refuge Uses, Long-Term Contracting, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey, San Benito, Santa Clara and Santa Cruz Cos., CA, Due: April 3, 1989, Contact: Bill Payne (916) 978-5488.

Published FR 1-6-89—Review period extended.

Dated: February 28, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-5048 Filed 3-2-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3529-1]

Intent To Prepare a Draft Enviromental Impact Statement (EIS); City of San Diego Wastewater Treatment Facilities, CA

AGENCY: U.S. Environmental Protection Agency (EPA) Region IX.

ACTION: Preparation of a Draft Environmental Impact Statement.

Purpose: In accordance with section 511(c) of the Clean Water Act (CWA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

For further information and to be placed on the project mailing list contact: Mr. Enio Sebastiani, Construction Grants Branch, U.S. EPA, (W-2-2), 215 Fremont St., San Francisco, CA 94105, Telephone: (415) 974-8316.

SUMMARY: The City of San Diego has initiated a new program, the Clean Water Program for Greater San Diego, with a goal of attaining full compliance with the CWA and NEPA. The program is currently in the facilities planning

stage. The resulting plan will recommend both secondary treatment and water reclamation facilities of sufficient size to serve the San Diego metropolitan area through the middle of the twenty-first century. Facilities covered by the plan will include an upgrade of the City's Point Loma wastewater treatment plant, one or two other secondary treatment plants, a number of water reclamation plants, sludge handling and disposal facilities, and associated pump stations and pipelines.

Need for Action: On September 30, 1986, EPA announced its decision to tentatively deny the City of San Diego's 1979 and 1983 applications for a waiver under Section 301(h) of the CWA. On November 3, 1986, the City Council authorized the City Manager to send EPA a letter of intent to file a revised waiver application. On February 17, 1987, the City Council decided to discontinue waiver efforts and to pursue secondary treatment.

Alternatives: Six alternatives are presently under consideration for siting secondary treatment plants in the San Diego area. The alternatives involve variations in the size and extent of treatment facilities in and around Sorrento Valley, at the existing Point Loma treatment site, at locations near Lindbergh Field, and at sites along the U.S./Mexico border. Alternative sites are also being considered for a number of water reclamation plants throughout the San Diego metropolitan area. The City of San Diego is not making any major decisions at the meetings itemized below with regard to the rejection or adoption of sites. The City is seeking public input which will be used to analyze the alternatives. Subsequent public meetings in the spring of 1989 will address the selection of an alternative.

Scoping: The City of San Diego will hold three initial public scoping meetings. Each meeting will be held in a different location within the greater San Diego area: (1) Monday, February 27, 1989, at 7:30 p.m. at University Towne Centre Forum Hall, Great American Building J-1, 4315 La Jolla Village Drive, La Jolla, CA; (2) Tuesday, February 28, 1989, at 7:30 p.m. at Point Loma High School Auditorium, 2335 Chatsworth Blvd., San Diego, CA; and (3) Wednesday, March 1, 1989, at 7:30 p.m. at Southwest High School, 1685 Hollister St., San Diego, CA. The public is encourage to attend, to provide their views on the proposed site alternatives for secondary wastewater treatment and water reclamation, and to assist in the identification of environmental issues.

Estimated Date of Draft EIS Release: June 15, 1990.

Responsible Official: Daniel W. McGovern, Regional Administrator.

Dated: February 28, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-5049 Filed 3-2-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140113; FRL-3532-5]

Access to Confidential Business Information by CRC Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its subcontractor, CRC Systems (CRC) of Fairfax, VA for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract no. 68-01-7176, subcontractor CRC, 11242 Waples Mill Road, Fairfax, VA will assist the Office of Toxic Substances' Information Management Division in performing modifications and enhancements to EPA data base systems containing TSCA CBI. CRC employees will require access to TSCA CBI on computer screens in order to perform the contract tasks. In addition, CRC employees will occasionally be required to review CBI documents to compare hard copy data to those data elements contained in the systems.

CRC is working as a subcontractor under the Computer Sciences Corporation. Access to TSCA CBI by CSC was previously announced in the **Federal Register** of October 31, 1985 (50 FR 45483).

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide CRC access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters facilities.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

CRC personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: February 24, 1989.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-4991 Filed 3-2-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44) U.S.C. Chapter 35).

Type: New Collection.

Title: National Fire Academy Course Monitoring System—National Fire Academy Course Evaluation.

Abstract: The National Fire Academy Course Evaluation form will be used to evaluate all on-campus and off-campus NMFA courses and to assess the effectiveness of the course materials and instructor performance.

Type of Respondents: Individuals or households.

Estimate of Total Annual Reporting and Recordkeeping Burden: 2,640.

Number of Respondents: 8,000.

Estimated Average Burden Hours Per Response: 33.

Frequency of Response: One-Time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestings for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: Febraury 27, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89-4973 Filed 3-2-89; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-821-DR]

Major Disaster and Related Determinations; Kentucky

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–821–DR), dated February 24, 1989, and related determinations.

DATED: February 24, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated February 24, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms and flooding beginning on or about February 13, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288, as amended by PL 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul E. Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster: The counties of Anderson, Bourbon, Bullitt, Butler, Casey, Franklin, Hardin, Harrison, Henry, Jessamine, Larue, Mercer, Nelson, Owen, Pendleton, Trimble, Washington, and Woodford for Individual Assistance and Public Assistance.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 89–4974 Filed 3–2–89; 8:45 am]

BILLING CODE 6718–02–M

Office of Training; Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: April 11–12, 1989.

Place: National Emergency Training Center, G Bldg., 2nd Floor Conference Room, Emmitsburg, MD 21727.

Time: April 11—8:30 a.m. to 5:00 p.m., April 12—8:30 a.m. to Agenda Completion.

Proposed Agenda: Old Business, New Business; Briefing of FY90 Operating Plan.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1123) on or before April 3, 1989.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dave McLoughlin,

Director, Office of Training.

Dated: February 21, 1989.

[FR Doc. 89–4975 Filed 3–2–89; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, The Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011198–001.

Title: Puerto Rico/Caribbean Discussion Agreement.

Parties: Hapag-Lloyd Ag, Thos. & Jas. Harrison Ltd., Nedlloyd Lines, B.V., Compagnie Generale Maritime, Sea-Land Service, Inc.

Synopsis: The proposed modification would add Crowley Caribbean Transport and Trailer Marine Transport as parties to the Agreement.

By Order of the The Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: February 28, 1989.

[FR Doc. 89–4953 Filed 3–2–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Compagnie Financiere de Suez; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 24, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Compagnie Financiere de Suez,* Paris, France,and Banque Indosuez, Paris, France; to acquire Daniel Breen & Co. L.P. and Breen Trust Company, and thereby engage in providing portfolio investment advice pursuant to § 225.25(b)(4); and performing trust company services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4954 Filed 3-2-89; 8:45 am]

BILLING CODE 6210-01-M

Orrstown Financial Services, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act Y (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, in will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 23, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Orrstown Financial Services, Inc.,* Orrstown, Pennsylvania; to acquire 18.39 percent of the voting shares of Farmers National Bank of Newville, Newville, Pennsylvania.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *People Banchshares of Gambier Incorporated,* Gambier, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The People Bank Gambier, Ohio.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *F.B.H. Corp.,* Fayette, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank of Fayette, Fayette, Alabama.

2. *Fayette County Bancshares, Inc.,* Peachtree City, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Fayette County Bank, Peachtree City, Georgia, a *de novo* bank.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *JDOB, Inc.,* Naples, Florida; to acquire 100 percent of the voting shares of First State Bank of New Germany, New Germany, Minnesota.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Farmers Banchshares, Inc.,* Maysville, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Bank of Maysville, Maysville, Missouri. Comments on the application must be received by March 17, 1989.

2. *NorCentral Bancshares, Inc.,* Portis, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, Portis, Kansas.

Board of Governors of the Federal Reserve System, February 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4955 Filed 3-2-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Philip Rocco; correction

This notice corrects a previous **Federal Register** notice (FR Doc. 89-3150) published at page 6450 of the issue for Friday, February 10, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for Philip J. Rocco amended to read as follows:

1. *Philip J. Rocco,* Santa Ana, California; to acquire 13.82 percent of the voting shares of California City Bancorp, Orange, California, and thereby indirectly acquire California City Bank, N.A., Orange, California.

Comments on this application must be received by March 17, 1989.

Board of Governors of the Federal Reserve System, February 27, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-4956 Filed 3-2-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0447]

CIBA Vision Corp.; Premarket Approval of CIBA Vision Sterile Saline Solution and CIBA Vision Sterile Buffered Saline Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CIBA Vision Corp., Atlanta, GA, for premarket approval, under the Medical Device Amendments of 1976, of the CIBA Vision Saline Solution and CIBA Vision Sterile Buffered Saline Solution. The devices are to be manufactured under an agreement with Armstrong Laboratories, Inc., West Roxbury, MA, which has authorized CIBA Vision Corp. to incorporate information contained in its approved premarket approval applications for the Armstrong Sterile

Saline Solution and the Armstrong Sterile Buffered Saline Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of December 23, 1988, of the approval of the application.

DATE: Petitions for administrative review by April 3, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On October 27, 1988, CIBA Vision Corp., Atlanta, GA 30360, submitted to CDRH an application for premarket approval of the CIBA Vision Sterile Saline Solution and the CIBA Vision Sterile Buffered Saline Solution. The devices are sterile physiological saline solutions (0.9 percent salt in water) in pressurized containers with a nitrogen propellant and are indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The application includes authorization from Armstrong Laboratories, Inc., West Roxbury, MA 02132, to incorporate information contained in its approved premarket approval applications for the Armstrong Sterile Saline Solution and the Armstrong Sterile Buffered Saline Solution.

On December 23, 1988, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 3, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 22, 1989.

Walter E. Gundaker,

Acting Deputy Director Center for Devices and Radiological Health.

[FR Doc. 89-4957 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89M-0024]

Advanced Cardiovascular Systems, Inc.; Premarket Approval of the ACS® Stack Perfusion™ Coronary Dilatation Catheter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Advanced Cardiovascular Systems, Inc., Mountain View, CA, for premarket approval, under the Medical Device Amendments of 1976, of the ACS® Stack Perfusion™ Coronary Dilatation Catheter. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of January 11, 1989, of the approval of the application.

DATE: Petitions for administrative review by April 3, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shang W. Hwang, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7371.

SUPPLEMENTARY INFORMATION: On May 3, 1988, Advanced Cardiovascular Systems, Inc., Mountain View, CA 94039-7101, submitted to CDRH a supplemental application for premarket approval of the ACS® Stack Perfusion™ Coronary Dilatation Catheter. The catheter is intended for use during percutaneous transluminal coronary angioplasty (PTCA) where the physician desires distal blood perfusion during prolonged balloon inflations. The catheter is intended for use in patients with coronary artery disease, who are acceptable candidates for coronary artery bypass graft surgery, and who meet one of the following selection criteria:

1. Single vessel artherosclerotic coronary artery disease that is discrete, subtotal, noncalcified, and accessible to a dilatation catheter.

2. Multiple vessel coronary artery disease under certain circumstances.

3. Coronary artery disease of the native coronary arteries and/or coronary artery bypass grafts of some patients who have previously undergone coronary artery bypass graft surgery and who have recurrence of symptoms and (a) progression of disease or (b) stenosis and closure of the grafts.

On September 16, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 11, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Shang W. Hwang (HFZ-450), address above.

Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 3, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 22, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-4958 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Funding Priorities for Grants for Residency Training and Advanced Education in the General Practice of Dentistry

The Health Resources and Services Administration announces the final funding priorities for Fiscal Year 1989 which will be used in making grant awards for Grants for Residency Training and Advanced Education in the General Practice of Dentistry, section 786(b) of the PHS Act which has been redesignated section 785 by Pub. L. 100-607, of the Health Professions Reauthorization Act of 1988.

Section 785 of the Act authorizes the Secretary to make grants to any public or nonprofit private school of dentistry or accredited postgraduate dental training institution (e.g., hospitals and medical centers) to plan, develop, and operate an approved residency or advanced educational program in the general practice of dentistry and to provide financial assistance to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry.

To receive support, programs must meet the requirements of final regulations at 42 CFR Part 57, Subpart L.

Review Criteria

The review of applications will take into consideration the following criteria:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 785 of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements;

(c) The administrative and managerial capability of the applicant to carry out the proposed project in a cost-effective manner;

(d) The qualifications of proposed staff and faculty;

(e) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

The following established preferences will be used in making grant awards in Fiscal Year 1989:

New programs (Category 1), followed by expanding programs (Category 2), and then program improvements (Category 3), and within Category 1), first funding will be for approved applications designed to establish programs in States in which no non-Federal supported residency or advanced educational programs in general dentistry are currently in operation.

There is no funding preference between residency training programs and advanced educational programs in general dentistry.

In accordance with section 785 of the Act, three distinct categories of program development can be supported. Applications must address at least one of these categories.

Category 1: Program Initiation

An applicant may request support for up to one year of program planning and development, followed by two years of program operation. For this purpose an applicant must show, at a minimum, preliminary provisional approval from the Commission on Dental Accreditation before the initial grant award date (grants will be effective July 1 of the current fiscal year). Before a second year grant award will be made, the grantee must show an accreditation classification of accreditation eligible.

Category 2: Program Expansion

An applicant may request support for an existing program which has full approval accreditation classification to fund the cost of a first-year enrollment increase in the program.

Category 3: Program Improvement

An applicant may request support for an existing program which has conditional approval or provisional approval accreditation to correct deficiencies or weaknesses in order to gain full approval accreditation status. Support is also available for an existing program which has full approval accreditation for changes or additions in faculty, curriculum and/or facilities to enhance the quality of the program.

Proposed funding priorities were published in the **Federal Register** of November 14, 1988 (FR 45822) for public comment. Three comments were received during the 30-day comment period. Two of the comments were in support of the proposed priorities.

A third respondent, while also supporting the proposed funding priorities, did have questions regarding

the application of some of the priorities. Specifically there was concern that Category 1 applicants can not meet the underrepresented minorities enrollment funding priority since such applicants have on enrollment history, whereas Categories 2 and 3 applicants can address the requirements. That is the case. However, since approved Category 1 applicants are funded before approved Categories 2 and 3 applicants, the awarding of points to approved Categories 2 and 3 applicants will not affect the funding or order of funding of approved Category 1 applicants.

In developing the underrepresented minorities enrollment funding priority, consideration was given to awarding points to applicants who submitted plans to attempt to increase minority enrollment. However, it was determined more appropriate to award points to approved applicants who had already initiated a minority enrollment effort and could demonstrate success. As indicated under the Review Criteria section of the Program Announcement, consideration is already being given to: (f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

Therefore in conducting the Fiscal Year 1989 grant cycle, the underrepresented minorities enrollment funding priority will be retained as stated, since it has been determined that the funding priority will not adversely affect the funding of approved Category 1 applicants; it will reward approved applicants who have on their own initiated and been successful with their minority enrollment efforts; and it will serve as a stimulus to other programs to initiate minority enrollment efforts.

In discussing the funding priorities regarding specific areas of curricular content, the third respondent had concern with terms as "new offerings" and "innovative approaches," and it was urged that existing and traditional materials and methods be also considered in determining whether the funding priorities are met. While terms as "new offerings" and "innovative approaches" are used in describing the curricular content funding priorities, what is new or innovative curricula in one institution may be extant, traditional or lacking in another. The curricular content funding priorities are designed to stimulate the development, expansion or implementation of curricula in specified areas in the content and manner determined by the needs of each applicant. All proposed efforts to offer or improve educational content and experiences in the funding priority areas will be considered in determining whether the funding priorities are met.

Therefore, as proposed the final funding priorities will be retained as follows:

A funding priority will be given to:

(1) Projects which satisfactorily document enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document a net increase of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native or Pacific Islanders) over average enrollment of the past three years in the project's postgraduate year (PGY) trainees.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population.

(3) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of HIV/AIDS patients

(4) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of dental services and utilization of peer developed guidelines and standards.

(5) Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple ambulatory settings and inpatient and extended care facilities.

This program is listed at 13.897 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: February 28, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-4999 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 17, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Secondary School Student Survey of Behaviors and Behavioral Determinants Related to AIDS/HIV Infection—NEW—The primary objectives of this study are to estimate the extent to which students in grades 9-12 engage in behaviors placing them at high risk of acquiring AIDS/HIV infection, and to survey the knowledge and beliefs among these students of high risk behaviors. Respondents: Individuals or households; Number of Respondents: 8,527; Responses Per Respondent: 1; Average Burden Per Response: .5 hours; Estimated Annual Burden: 4,264 hours.

2. Statement in Support of Application for Waiver of Excludability Under Sections 212(a)(1) and (3) of Immigration and Nationality Act—0920-0006—Aliens who are mentally retarded or who have had one or more attacks of insanity are eligible to apply for waiver of excludability under Section 212(a)(1) and (3) of the Immigration and Nationality Act. If accepted, the applicant's sponsor must locate a medical facility or specialist in the U.S. that agrees to examine the applicant on arrival in the U.S. and provide a report of the examination to the Centers for Disease Control. Respondents: Individuals or Households, Businesses or other for-profit, Small businesses or organizations; Number of Respondents: 500; Responses Per Respondent: 1; Average Burden Per Response: .166 hours; Estimated Annual Burden: 83 hours.

3. Periodic Survey of Health Status, Minnesota Colon Cancer Control Study—0925-0275—Screening for occult blood in the stool is being recommended by many health professionals as a method for early detection of colorectal cancer. The information collection requested in this study is necessary to determine whether such screening is reliable and decreases mortality for colorectal cancer. Respondents: Individuals, Small businesses or organizations, Businesses or other for-profit; Number of Respondents: 35,656; Responses Per Respondent: 1; Average Burden Per Response: .17 hours; Estimated Annual Burden: 5,992 hours.

4. Survey of Physician Practice Behaviors Related to the Treatment of People with Diabetes Mellitus—NEW—Data will be collected on a representative sample of 1,600 general and family practitioners, pediatricians and internists to provide information on their attitudes and practice behaviors

related to the treatment of people with diabetes mellitus. Information will be used to describe conventional treatment and assist in developing more effective information dissemination. Respondents: Small businesses or organizations, Businesses or other for-profit; Number of Respondents: 2,091; Number of Responses Per Respondent: 1; Average Burden Per Response: .274 hours; Estimated Annual Burden: 574 hours.

5. National Sexually Transmitted Diseases Morbidity Program—0920-0011—This clearance allows the collection of STD morbidity data from State and local health departments. The data are used to evaluate progress relative to STD control efforts as well as assisting State/local health managers to standardize collection procedures. Respondents: State or local governments; Number of Respondents: 60; Number of Responses Per Respondent: 1,577; Average Burden Per Response: .962 hours; Estimated Annual Burden: 1,517 hours.

6. National Sexually Transmitted Diseases Epidemiology Program—0920-0001—This information collection provides data used in the public health community to assist in the control and prevention of STD's. Through outreach programs, individuals infected with STD's are contacted and directed to treatment centers. Respondents: State or local governments; Number of Respondents: 60; Number of Responses Per Respondent: 15.7; Average Burden Per Response: 6.38 hours; Estimated Annual Burden: 5,993 hours.

OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: February 27, 1989.

Steven A. Grossman,

Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-4969 Filed 3-2-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-89-1947]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451, 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 24, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for Funding or Refunding the Community Housing Resource Board (CHRB) program.

Office: Fair Housing and Equal Opportunity.

Description of the Need for the Information and its Proposed Use: The purpose of the narrative is to provide current information on CHRB activity to enable HUD to evaluate this information and make a determination on the equitable distribution of program funds.

Form Number: None.

Respondents: Individuals or Households and Small Businesses or Organizations.

Frequency of Submission: One-Time Only.

Estimated Burden Hours:

	Number of Respondents	X	Frequency of Response	X	Hours per Response	=	Burden Hours
Grant application	110		1		180		19,800

Total estimated Burden Hours: 19,800.
Status: Extension
Contact: Florence L. Multsby, HUD, (202) 755-7007; John Allison, OMB, (202) 395-6880.

Date: February 24, 1989.

[FR Doc. 89-5020 Filed 3-2-89; 8:45 am]
BILLING CODE 4210-01-M

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-89-1946; FR-2617]

Application Submission Dates for HUD-Administered Small Cities Program for Fiscal Year 1989

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises prospective applicants of the date for submission of applications to the HUD office for the HUD-Administered Small Cities Program in New York under the Community Development Block Grant Program for Fiscal Year 1989.

FOR FURTHER INFORMATION CONTACT: Jeannine Jacokes, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-6322. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 570.420(h)(3), the Department of Housing and Urban Development (HUD) has established the date for submission of applications for Small Cities grants in the State of New York for Fiscal Year 1989. Applications for funding under the Single Purpose and Comprehensive Grant provisions of the HUD-Administered Small Cities Program must be postmarked no later than April 17, 1989. Applications postmarked after that date are unacceptable and will be returned.

Applications for Single Purpose grants under 24 CFR 570.430, or applications for Comprehensive Grants under 24 CFR 570.426 for the State of New York are required to be submitted no later than April 17, 1989. Applicants in New York in the Counties of Sullivan Ulster and Putnam and nonparticipating jurisdictions in the Urban Counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Regional Office. All other nonentitled communities in the State of New York should submit their applications to the Buffalo Field Office.

The Application requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned approval number 2506-0060.

This action is exempt from the provisions of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: February 9, 1989.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 89-5019 Filed 3-2-89; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-09-4333-12]

Closure Order for Off-Road Vehicle Use

ACTION: Closure Order for Off-Road Vehicle Use.

SUMMARY: Notice is hereby given related to the closure of public land to off-road vehicle (ORV) use in accordance with regulations contained in 43 CFR 8341.2. Approximately 135 acres of wetlands and 35 acres of rare plant habitat located in portions of Section 31, T. 5 N., R. 1 W. and Section 6, T. 4 N., H. M., commonly referred to as the "North Jetty," will be temporarily closed to ORV use. This closure order will remain in effect until the *Arcata Area Resource Management Plan* is formally approved and the entire 300-acre area officially designated as open, limited or closed.

DATE: This closure order is effective March 15, 1989.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Arcata Resource area Manager, 1125 16th Street, Room 219, P.O. Box 1112, Arcata, California 95521 [Telephone: (707) 822-7648] or District Manager, Ukiah District Office, 555 Leslie Street, Ukiah, California 95482 [Telephone: (707) 462-3872].

SUPPLEMENTARY INFORMATION: The purpose of closing the affected lands to vehicle use is to protect the Menzies' Wallflower *(Erysimum menziessi)* and its habitat, listed as "endangered" by the California Department of Fish and Game (DFG), and a scarce wetland habitat area which is an important roosting and feeding ground for Shorebirds, Herons, Hawks, Kingfishers, Swallows and Wrens. According to the DFG, and "estimated" 90% of California's wetlands have been highly disturbed and no longer productive. Menzies' Wallflower habitat has undergone even more distrubance—only two other locations exist along the California coast (Monterey and Fort Bragg).

Habitat restoration plans and research studies are currently being conducted within the 35-acre rare plant area which is delineated by a perimeter fence constructed in 1986. The wetland area fence will be completed by January 31, 1989. Information and regulatory signs are posted and BLM Ranger patrols have helped to inform and educate the visting public of the resource values that require protection.

The remaining public lands (approximately 130 acres) that surround these two sensitive areas will remain available for vehicle use and recreational facilities developed to expand ORV opportunities pursuant to the prescriptions outlined in the approved *Samoa Dunes Off-Road Vehicle Activity Plan* (1982).

Maps showing these open and closed areas are on file at the Bureau of Land Management's Arcata Resource Area Office, Arcata, California.

John Lloyd,

Arcata Area Manager.

[FR Doc. 89-4948 Filed 3-2-89; 8:45 am]
BILLING CODE 4310-40-M

[CA-069-89-4130-12]

Availability of Draft Environmental Impact Statement/Environmental Impact Report; Hart Mining District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the availability of the Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) prepared to assess a new mining project proposed by the Viceroy Gold Corporation for the historic Hart Mining District of the Castle Mountain region of Southern California.

SUMMARY: Viceroy Gold Corporation has proposed development and operation of an open pit, cyanide heap leach gold mine in the historic Hart Mining District of the Castle Mountain region of San Bernardino County, California. The region has a long history of mining and lies within the California Desert Conservation Area, near the state border between California and Nevada.

The Bureau of Land Management and the County of San Bernardino have prepared a joint Environmental Impact Statement/Environmental Impact Report

under the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) to analyze any probable environmental impacts the undertaking might create. The Corporation proposes to process ore from the mine at a rate of about three million tons per year, for approximately 10 years. Primary public issues of concern, which surfaced during the public scoping process in early 1988, include water resources, wildlife, land use, vegetation, access, health, safety and visual resources. Potential adverse impacts, according to the Draft EIS/EIR now available to the public would be mitigated by implementation of measures incorporated in project planning and design, including reclamation.

Copies of the Draft EIS/EIR on the proposed Castle Mountain Mine Project are available from the Bureau of Land Management, Needles Resource Area, 101 Spike's Road, P.O. Box 888, Needles, CA 92363 or from the San Bernardino County Office of Planning, 385 North Arrowhead, 3rd Floor, San Bernardino, CA 92415-0182.

A public review and comment period had been established from March 8 through May 8, 1989. Written comments should be addressed to John Bailey, Bureau of Land management, Needles Resource Area, 101 Spike's Road, P.O. Box 888, Needles, CA 92363-0888 and must arrive prior to close of business May 8, 1989.

An Administrative Law Judge will preside at three public hearings to allow the public an opportunity to provide oral comments on the adequacy and accuracy of the Draft EIS/EIR. These formal public hearings will be attended by a court reporter who will record comments and testimony for the record. Each of the public hearings will begin at 7 p.m. on the following dates and locations:

Date	Location
Tuesday, April 18, 1989....	SAN BERNARDINO, CALIFORNIA, San Bernardino County Government Center, 385 N. Arrowhead, 1st Floor Hearing Room.
Wednesday, April 19, 1989.	BARSTOW, CALIFORNIA, Barstow Station Inn 1511 E. Main Street.
Thursday, April 20, 1989...	LAS VEGAS, NEVADA, Clark County, Education Center 2832 Flamingo Road

A Final EIS/EIR will be prepared in response to the comments received during the public review period and will describe any changes, deletions or additions made to the Draft document. A Record of Decision will be issued by the Bureau of Land Management and the County of San Bernardino after a 30-day public review of the Final EIS/EIR.

FOR FURTHER INFORMATION CONTACT: John Bailey, Bureau of Land Management Project Manager, Needless Resource Area, 101 Spike's Road, P.O. Box 888, Needles, CA 92363 (619) 326-3896.

Date: February 16, 1989.

Gerald E. Hillier,

District Manager.

[FR Doc. 89-4460 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-84-M

[ID-020-41-5101-09-XDBJ]

Idaho Power's Southwest Intertie 500kV Electrical transmission Line Project; Intent To Prepare an Environmental Impact Statement/Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement/Plan Amendment (EIS/PA).

SUMMARY: Notice is hereby given that the Bureau of Land Management in cooperation with the United States Forest Service and the Bureau of Reclamation is proposing to prepare an EIS/PA for Idaho Power's Southwest Intertie 500kV electrical transmission line project running from Midpoint, Idaho, south to near Ely, Nevada, and then east to near Delta, Utah.

DATES: The public, state and local governments and other Federal agencies are asked to participate in the EIS process. Written comments will be accepted until April 28, 1989.

In addition to written comments, the following public scoping meetings will be held.

Twin Falls, Idaho. Where: Holiday Inn, 1350 Blue Lakes Blvd. N., Twin Falls, Idaho.

Date: March 27, 1989.

Time: 7:00 pm to 9:00 pm.

Wells, Nevada. Where: Wells High School, 115 Lake Avenue, Wells, Nevada.

Date: March 28, 1989.

Time: 7:00 pm. to 9:00 pm.

Ely, Nevada. Where: Bristlecone Convention Center, 150 6th Street, Ely, Nevada.

Date: March 29, 1989.

Time: 7:00 pm to 9:00 pm.

Delta, Utah. Where: Delta City Council Chambers, 76 North 200 West, Delta, Utah.

Date: March 30, 1989.

Time: 7:00 pm to 9:00 pm.

ADDRESS: Written comments should be addressed to: Gerald Quinn, District Manager, Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho, 83318.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Simonson, Project Manager, Burley District Office, Route 3, Box 1, Burley, Idaho, 83318; phone (208) 678-5514.

SUPPLEMENTARY INFORMATION: The Idaho Power Company plans to construct and operate a 500kV transmission line from its existing Midpoint substation near Shoshone, Idaho, south approximately 400 miles to a point in the vicinity of the Intermountain Power Plant near Delta, Utah. The proposed project would interconnect with facilities jointly developed and owned by Los Angeles Department of Water and Power, Nevada Power, Utah Power and Light, the Utah Associated Municipal Power System and Deseret G&T.

The additional transmission capacity provided by the project would enable Northwest Utilities to market non-firm hydroelectric power in excess of regional needs to markets not presently accessible over existing transmission lines. The project would also allow Northwest utilities to receive energy from the Southwest during periods of high demand such as severe climatic conditions, or in periods of drought, where hydro generation is reduced or interrupted. The project would also enhance the reliability of the interconnected transmission in the Western United States.

Construction is proposed to start in 1991 and end in 1993. The desired in-service date is 1994.

The Bureau of Land Management's scoping process for the EIS/PA will include: (1) Identification of significant issues; (2) identifications of sensitive or critical environmental impacts; (3) identification of reasonable alternative transmission line routes; and (4) notifying groups, individuals and agencies so that additional information concerning these issues and concerns can be obtained.

Should a proposed powerline route lay outside any existing BLM right-of-way (R/W) corridor or a designated R/W corridor, the following land use plans may be amended:

Idaho: Monument Resource Management Plan (RMP), Twin Falls Management Framework Plan (MFP).
Nevada: Wells RMP, Egan RMP, Shell RMP, Humbolt National Forest Plan.
Utah: Box Elder RMP, Warm Springs RMP, House Range RMP.

Issues that have been identified to date include, but are not limited to:

—Utilizing transmission line routes that may lay outside of BLM designated or existing corridors.
—Capacity of existing or designated corridors to handle additional power lines or other utilities.
—Powerline locations that may conflict with military aircraft uses.
—Visual impacts of transmission lines for highly sensitive visual resource management areas.
—Impacts to cultural resources lying within utility corridors.

Martin J. Zimmer,

Acting State Director, Idaho.

[FR Doc. 89-4942 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-GG-M

[UT-020-09-4333-08]

Salt Lake District; Intent To Prepare Off-Highway Vehicle Plan and Conduct Scoping Meetings; Pony Express Resource Management Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare off-highway vehicle plan and conduct scoping meetings.

SUMMARY: The Bureau of Land Management (BLM) intends to prepare a plan to address Off-Highway Vehicle (OHV) use on 2,032,899 acres of public lands in the Pony Express Resource Management Area (Salt Lake, Tooele and Utah counties). The plan will analyze the need for a revision of current OHV designations, and once enacted, would constitute a formal redesignation of lands as either "open", "limited", or "closed" to OHV use.

The purpose of these designations is to provide for the management and protection of public land resources, persons and property using the public lands, and to minimize conflicts among the various uses of those lands. Resource considerations such as wildlife, threatened and endangered species, wildlife habitat, minerals, cultural resources, soils, watershed, forestry, range, visual resources, recreation, and others will be examined by an interdisciplinary team of BLM specialists who will prepare an environmental assessment of the OHV plan.

The Salt Lake District will conduct four public scoping meetings to receive input to be used in the preparation of the plan: March 21—State Line Hotel and Convention Center (Cobb Room), Wendover, Nevada; March 22—Department of Natural Resources auditorium, 1636 West North Temple, Salt Lake City, Utah; March 28—Payson City Council Chambers, 439 West Utah Ave., Payson, Utah; March 30—Tooele Junior High School cafeteria, 411 West Vine Street, Tooele, Utah. All four public meetings will begin at 7 p.m. Written comments should be sent to the Salt Lake District Office and received by April 14 for consideration during the preparation of the draft OHV plan. Detailed maps of the planning area are available for inspection and review at the district office.

FOR FURTHER INFORMATION CONTACT: Gregg Morgan, Pony Express Resource Area Outdoor Recreation Planner, BLM, 2370 South 2300 West, Salt Lake City, Utah 84119: (801) 524-5348.

SUPPLEMENTARY INFORMATION: General areas to be studied include the northern Deep Creek Mountains, Bonneville Salt Flats, Knolls, Puddle Valley, Cedar Mountains, Skull Valley, north Stansbury Mountains, Stansbury Island, Silver Island Mountains, Onaqui Mountains Rush Valley, Tintic Mountains, Simpson Mountains West Mountain and others.

When completed areas will be redesignated into one of three different categories:

"Open areas" where all types of vehicle use is permitted at all times, anywhere in the area, subject to applicable regulations and vehicle standards.

"Limited areas" where OHV use is restricted to meet specific resource management objectives. Examples of limitations include: numbers or types of vehicles; time or season of use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; or other restrictions.

"Closed areas" are areas where off-road vehicles use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

James M. Parker,

Utah State Director.

[FR Doc. 89-4941 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-DQ-M

[NM-010-09-4320-12/GP9-0111]

Albuquerque, NM; District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Board Meeting.

SUMMARY: The BLM's Albuquerque District Grazing Advisory Board will meet on Thursday, April 13, 1989, at 10:00 a.m., in the BLM District Office located at 435 Montano NE., in Albuquerque, New Mexico.

The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Election of a Chairman and Vice Chairman.
3. Range improvements progress report for FY 89 (8100 funds).
4. Range Improvement proposals for review and ranking for FY 90.
5. Status of grazing in the El Malpais National Monument and Conservation Area.
6. Progress on Range Improvement Maintenance Plans.

The meeting is open to the public. Anyone interested in attending this meeting to make a presentation must notify the District Manager by April 10, 1989. Written statements may also be filed for the Board's consideration.

Summary minutes of the meeting will be on file in the Albuquerque District Office and available for public inspection during business hours within 30 days of the meeting.

For further information contact: Gary Wood, District Range Conservationist, BLM, 435 Montano NE., Albuquerque, New Mexico 87107.

Robert T. Dale,

District Manager.

[FR Doc. 89-4947 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-FB-M

[NM-010-09-4111-16; NM-010-GP9-0108]

Albuquerque District, NM; Oil and Gas Management, Delegation of Authority

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Change of Delegation of Authority for Oil and Gas Operations in Albuquerque District.

SUMMARY: The reservoir management function of Albuquerque District is being transferred from Albuquerque to Farmington, New Mexico. Included in the reservoir management function

transfer are the unit agreement, drainage and diligence functions. This function transfer applies to the entire Albuquerque District which includes Farmington, Rio Puerco and Taos Resource Areas. However, the office location of functions relating to applications for permit to drill, sundry well notices and reports remains at the individual Resource Area Offices. Also, the Albuquerque Office remains responsible for Natural Gas Policy Act determinations and communitization agreements for Rio Puerco and Taos Resource Areas. Communitization agreements for Farmington Resource Area will be processed at Farmington.

All lessees, operators and other parties are advised to direct all correspondence relating to the above identified reservoir management functions for Albuquerque District and communitization agreements in Farmington Resource Area, subsequent to the effective date, to the Farmington Resource Area at the following address or phone number: Bureau of Land Management, Farmington Resource Area, 1235 La Plata Highway, Farmington, New Mexico 87401. Telephone (505) 327-5340.

EFFECTIVE DATE: April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Sid Vogelpohl, Albuquerque District, 435 Montano NE., Albuquerque, New Mexico 87107, (Telephone Number 505-761-4503).

Patricia E. McLean,

Associate District Manager.

[FR Doc. 89-4946 Filed 3-2-89; 8:45 am]

BILLING CODE 4310-FB-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524 (b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524 (b).

A1. Parent corporation and address of principal office: Elswood Investment Corporation, P.O. Box 49100, Four Bentall Centre, Vancouver, BC, Canada V7X 1H3.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) General Hardwood Company, d/b/a Hardwoods, Inc., incorporated in the State of Washington;

(ii) Hardwoods, Inc., Alaska, incorporated in the State of Alaska;

(iii) Hardwoods, Inc., California, incorporated in the State of California;

(iv) Hardwoods, Inc., Colorado, incorporated in the State of Colorado;

(v) Hardwoods, Inc., Utah, incorporated in the State of Utah;

(vi) Sauder Exterior Building Products Inc., incorporated in the State of Washington;

(vii) Siteline Exterior Corporation, incorporated in the State of Washington;

(viii) American Maywood Corporation, incorporated in the State of Washington;

(ix) Seattle Gypsum, Inc., incorporated in the State of Washington;

(x) Seacom Investment Corp., incorporated in the State of Washington;

(xi) Wellington Investment Corporation, incorporated in the State of Washington;

(xii) Takahashi Industries Limited, incorporated in the Province of British Columbia, Canada;

(xiii) Sauder Industries Limited, incorporated in the Province of British Columbia.

B1. Parent corporation and address of principal office: Glasstream Boats, Inc., Hwy 129S, P.O. Box 943, Nashville, Georgia 31639.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Starline Boats, Inc. Incorporated—State of Georgia

(ii) Century Boat Company, a division of Glasstream Boats, Inc., Incorporated—State of Georgia

(iii) Arrowglass Boat Company, a division of Glasstream Boats, Inc. Incorporated—State of Georgia

C1. Parent corporation and address of principal office: Maytag Corporation, 403 W. 4th St. N., Newton, IA 50208.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

(i) Ardac, Inc.—Oho.

(ii) Dixie-Narco, Inc.—West Virginia.

(iii) Holland Distributors, Inc.—Delaware.

(iv) Hoover Company—Delaware.

Noreta R. McGee,

Secretary.

[FR Doc. 89-4970 Filed 3-2-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Moore Development Co., Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 21, 1989, a proposed consent decree in *United States of America* v. *Moore Development Company, Inc.* No. 86-C-80, was lodged with the United States District Court for the District of Colorado.

The proposed consent decree resolves a judicial enforcement action brought by the United States, on behalf of the Environmental Protection Agency ("EPA"), against defendants Moore Development Company, Inc., F.E. Murphy Construction Company, Inc., Wayne Gomez Demolition and Excavation, Inc., and Asbesco, Inc., for violations of the Clean Air Act. The complaint filed by the United States alleged that defendants violated the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated pursuant to section 112 of the Act, in connection with the demolition of a facility in Lakewood, Colorado.

The proposed consent decree enjoins defendants (except Asbesco, Inc., which has been dismissed from the case) from violating the asbestos NESHAP in the future and provides that any such violation occurring during the one-year life of the decree will result in the imposition of a stipulated penalty of $25,000 in addition to any other penalties available under applicable federal law. The proposed consent decree also requires defendants to pay a total civil penalty of $12,000 to the United States Treasury.

The Department of Justice will receive for a period of thrity (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044, and should refer to *United States of America* v. *Moore Development Company, Inc.*, D.O.J. Ref. 90-5-2-1-879.

The proposed consent decree may be examined at the Office of the United States Attorney. District of Colorado, 1200 Federal Office Building, Drawer 3615, 1961 Stout Street, Denver, Colorado 80294, and at the Region VIII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Thomas A. Speicher, 999 18th Street, Suite 500, Denver, Colorado 80202. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division,

U.S. Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 89-5043 Filed 3-2-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Solicitation for Grant Application: Job Training Partnership Act, Title IV, Part C, Program Year 1989

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Notice.

SUMMARY: On January 6, 1989 an early announcement was made in the **Federal Register** (54 FR 497) that a Solicitation For Grant Application (SGA) for JTPA Title IV, Part C (JTPA IVC) funds for Program Year 1989 would be made available on or about February 3, 1989. Additionally, this announcement enumerated many of the changes being made in the JTPA IVC program by the forthcoming SGA.

DATE: An application package and instructions for completion will not be made available for issuance on or about March 3, 1989. The closing date for receipt of a completed application in response to the SGA, or a letter of intent to make a subsequent application, will be no later than 4:30 pm, May 1, 1989.

ADDRESS: A copy of the application package and instructions will be mailed to all State entities which presently administer JTPA Title IVC grants and to the Employment Security Agency of each State.

Signed at Washington, DC, this 28th day February 1989.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 89-5024 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

[TA-W-21,391]

A.K. Guthrie Drilling, Big Spring, TX; Affirmative Determination Regarding Application for Reconsideration

By applications dated January 13, 14, and 27, 1989 the petitioners and a former company official requested administrative reconsideration of the Departmentof Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of former workers of A.K. Guthrie Drilling, Big Spring, Texas. The negative determination will soon be published in the **Federal Register.**

The petitioners claim, among other things, that they should be covered under the retroactive provisions of the 1988 amendments to the Trade Act since they were employed by an independent firm providing services to the oil and gas industry. Also, a former company official claims that A.K. Guthrie Drilling is an appropriate subdivision (Drilling Department) of the family trust which produces the oil and should be certified. It is also claimed that the workers filed under the wrong name—they should have filed their petition under Guthrie Oil and Gas Properties.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 3rd day of February, 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-5026 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,702]

Charles E. Hynek, Inc.; Dallas, TX; Negative Determination Regarding Application for Reconsideration

By an application dated January 22, 1989, the company requested administraive reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 12, 1989 and will be published in the **Federal Register** soon.

Pusuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) It it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a mistake interpretation of facts or of the law justified reconsideration of the decision.

The company states that it composes and provides crude oil and natural gas prospects to attract potential investors for unaffiliated firms in the oil and gas industry. The company claims that oil and gas prospects are a visible and tangible product.

The Department of Labor has consistently determined that the performance of services does not constitute the production of an article as required by section 222 of of the Trade Act of 1974. The 1988 amendments to the Trade Act, in the Omnibus Trade and Competitiveness Act, extended coverage to workers in indpendent firms in the oil and gas industry engaged in exploration or drilling. The amended Act provides that independent firms engaged in exploration or drilling shall be considered to be producing oil and natural gas. Services involving the development of oil and gas prospects are not directly related to exploration or drilling, as provided for in section 222 (b)(2)(A) of the Act, and therefore are not covered under Act.

Further, in its initial determination, the Department addressed at length the manner in which workers of firms providing services could be certified for adjustment assistance. Those conditions have not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC. this 22nd day of February 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-5027 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,318]

Fitkin Petroleum Corp.; Oklahoma City, OK: Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition received on November 18, 1988 and filed on behalf of workers at Fitkin Petroleum Corporation, Oklahoma City, Oklahoma.

Fitkin Petroleum Corporation is a firm consisting of a single employee. Section 222 of the Trade Act specifies the group eligibility requirements for trade adjustment assistance benefits; the definition of "group," according to § 90.1 of the Rules and Regulations for administering the Trade Act, is three or more workers in a firm or an appropriate subdivision thereof. Since Fitkin Petroleum Corporation did not employ three workers, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5032 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,347A PLANT #15; TA-W-21,347B PLANT #52; TA-W-21,347C PLANT #56; TA-W-21,347D PLANT #21; TA-W-21,347E PLANT #23; TA-W-21,347F PLANT #16; TA-W-21,347G PLANT #28; TA-W-21,347H PLANT #3626]

General Motors Corp. Pontiac Motor Division Pontiac, MI; Affirmative Determination Regarding Application for Reconsideration

By an application dated January 19, 1989 the United Auto Workers and the company requested administrative reconsideration of the Department of Labor's Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of General Motors Corporation's Pontiac Motor Division, Pontiac, Michigan. The notice will be published in the Federal Register soon.

The union claims that integrated production occurred between Pontiac Motor Division Plants whose workers are under a certification and 18 other plants in Pontiac. The company states that the Pontiac complex is made up of numerous manufacturing and support service operations at plants in Pontiac, Michigan.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of February 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-5025 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,151]

Holmes & Narver Services, Inc., Prudhoe Bay, AK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Holmes & Narver Services, Incorporated, Prudhoe Bay, Alaska.

A negative determination applicable to the petitioning group of workers was issued on January 24, 1989 (TA-W-21,865). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 15th day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5031 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21, 739]

Myers Drilling Co., Midland, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a worker petition which was filed on behalf of workers at Myers Drilling Company, Midland, Texas.

An active certification covering the petitioning group of workers remains in effect (TA-W-21, 739). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 6th day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5029 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22, 166]

Northland Maintenance Co., Prudhoe Bay, AK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 18, 1988 in response to a petition which was filed by Teamsters Local 959 on behalf of workers and former workers at Holmes & Narver Services, Incorporated, Prudhoe Bay, Alaska.

A negative determination applicable to the petitioning group of workers was issued on January 31, 1989 (TA-W-21,916), No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 15th day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5030 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21.125 Harahan, LA; TA-W-21.125A Houston, TX]

Offshore Navigation, Inc.; Negative Determination Regarding Application for Reconsideration

By an application dated January 10, 1989, a company official requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 25, 1988 and will be published in the Federal Register soon.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company official claims that its services are an inseparable component of a joint marine petroleum exploration effort for crude oil. In its search for oil in the Gulf of Mexico, ONI would direct research vessels via a radiopositioning system to predetermined interest points where geophysical data would be obtained.

Investigation findings show that geophysical companies hire ONI to direct seismic vessels in the Gulf to locations here seismic readings are taken. In addition, if the oil company decides to drill for oil in the Gulf, ONI will direct the vessels to the drilling site.

The Department's denial was based on the fact that section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 does not apply to workers of the subject firm, since the preponderance of activities performed by workers of ONI consist of navigational services and not drilling or exploration.

Further, investigation findings show that off-shore producers of crude oil contract with geophysical companies to provide seismic data who in turn hire firms like ONI to provide navigational services. Independent firms providing navigational services to other firms providing services to oil producers would only be indirectly related to the exploration and drilling of crude oil. Accordingly, the causal nexus for which a basis for certification could be established is not present.

Further, in its initial denial, the Department addressed at length the only way service workers, outside the oil and gas industry, could be certified for worker adjustment assistance. Those conditions have not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of February 1989.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-5028 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22, 940]

Range Oil Co., Inc. Wichita, KS; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on November 18, 1988 and filed on behalf of workers at Range Oil Company, Incorporated, Wichita, Kansas.

The subject petition was not signed by employees of Range Oil Company nor by an authorized representative of Range Oil Company. The three workers signing the petition were employed by Range Drilling Company, Incorporated; an investigation is currently ongoing for Range Drilling Company (TA-W-21,940). Consequently, further investigation of Range Oil Company would serve no purpose, and this investigation has been terminated.

Signed at Washington, DC, this 15th day of February, 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5033 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,072]

Stellum Oilfield Supply, Inc., Olney, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a worker petition received on November 18, 1988 and filed on behalf of workers at Stellum Oilfield Supply, Incorporated, Olney, Illinois.

The subject petition was not signed by employees of Stellum Oilfield Supply, Incorporated nor by an authorized representative of Stellum Oilfield Supply, Incorporated. The three workers signing the petition were employed by Trident Drilling Completion and Service, Incorporated. Workers at Trident Drilling Completion and Service, Incorporated are currently certified as eligible to apply for trade adjustment assistance benefits (TA-W-22,086). Consequently, further investigation of Stellum Oilfield Supply, Incorporated would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of February 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-5034 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,328; Clodine, Texas TA-W-21,328A; Williston, ND]

Buford Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 16, 1988 applicable to all workers of Buford Drilling Company in Clodine, Texas.

Based on new information from the company, additional workers were separated from Buford Drilling Company, in Williston, North Dakota during the period applicable to the petition. The notice, therefore is amended by including the Williston, North Dakota location.

The amended notice applicable to TA-W-21,328 is hereby issued as follows:

"All workers of Buford Drilling Company in Clodine, Texas and Williston, North Dakota who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC., this February 22, 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-5037 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 1988 and January 1989.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-21,123; Neumin Production Co., Point Comfort, TX
TA-W-21,071; Compo Chemical Co., Mansfield, MA
TA-W-21,108; Houze Glass Corp., Point Maron, PA
TA-W-21,047; Acco Babcock, Inc., Warren, MI
TA-W-21,211; Ontario Forge Corp., Muncie, IN
TA-W-21,156; Airlanta Co., Gloucester City, NJ
TA-W-21,227; Sigri Carbon Corp., Hickman, KY
TA-W-21,241; Transamerican Natural Gas Corp., Laredo, TX
TA-W-21,263; Dyne Oil and Gas, Inc., Borger, TX
TA-W-21,344; General Motors Corp., New Departure Hyatt, Bristol, CT
TA-W-21,183; Garden State Knitting Mills, Linden, NJ
TA-W-21,036; Town & Country Shoes, Inc., Sedalia, MO
TA-W-21,403; Century Data, Inc., Anaheim, CA
TA-W-21,896; Coleco Industries, Inc., Mayfield, NY
TA-W-21,474; Roth American Co., Wilkes Barre, PA
TA-W-21,462; Newmont Oil Co., Houston, TX
TA-W-21,435; Hughes Texas Petroleum, Beeville, TX
TA-W-21,348; General Motors Corp., Hydramatic Div., Willow Run Plant, Ypsilanti, MI
TA-W-21,240; Texas Pipe and Coupling, Hughes Springs TX
TA-W-21,318; Uber Glove Co., Inc., Owatonna, MN
TA-W-21,224; Sarita Energy, Austin, TX
TA-W-21,349; General Hose Products, Inc., Fairfield, NJ
TA-W-21,420; Fiberglass Systems, Inc., Big Spring, TX
TA-W-21,457; Minard Run Oil Co., Bradford, PA
TA-W-21,548; Artel Chemical Corp., Nitro, WV
TA-W-21,586; Stone Safety Corp., Wallingford, CT
TA-W-21,933; Quanico Oil and Gas, Inc., El Dorado, AZ
TA-W-21,567; Hrubetz Operating Co., Forsan, TX
TA-W-21,572; Lafarge Corp., Dallas, TX
TA-W-21,591; Vanguard Oil Co., Inc., Mt Carmel, IL
TA-W-21,499; Ware-Knitters, Inc., Calais, ME
TA-W-21,335; Denton Mills, Inc., Centreville, MI
TA-W-21,736; May Energy, Inc., Oil City, PA
TA-W-21,610; Crystal Oil Co., Shreveport, LA
TA-W-21,461; Navarro Waterflood Co., Corsicana, TX
TA-W-21,479; Stroube Oil Co., Coricana, TX
TA-W-21,596; Aqua Chem, Inc., Milwaukee, WI
TA-W-21,668; Struthers Dunn, Pitman, NJ
TA-W-21,880; J. David Reynolds Co., Camden, AR
TA-W-21,761; Sherman Drilling, Mineral City, OH
TA-W-21,155; J.C. Langley Oil Co. Smackover, AR
TA-W-21,740; The Narrotex Corp., Passaic, NJ
TA-W-21,746; Petro-Tech, Inc., Seneca, PA
TA-W-21,568; Joy Technologies, Inc., Wheeling Fittings Div., Cambridge, OH
TA-W-21,569; Joy Technologies Wheeling Fittings Div., Woodlake, CA
TA-W-21,480; Sturgis Newport, Business Forms, Sturgis, MI
TA-W-21,185; Gibson Associates, Inc., Cranford, NJ
TA-W-21,605; Challenger Circle F, Trenton, NJ
TA-W-21,663; SIA America, Inc., Alliance, OH
TA-W-21,339; Ethly Corp., Oil and Gas Div., Baton Rouge, LA

In the following cases, the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-21,120; Milprint, Inc., Milwaukee, WI

U.S. imports of sanitary food containers are negligible.

TA-W-21,154; Abex, Mahwah, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,159; BHP Engineering, Inc., Corpus Christi, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,242; Transwestern Mining Co., Claremore, OK

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,194; Hinkle Oil Co., Wichita, KS

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,164; Celeron Oil and Gas Englewood, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,173; Diamond Tool and Horseshoe Co., Duluth, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,044; Woods Petroleum Corp., Denver, CO

Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,074; Cooper Industries, Marshall, TX

U.S. imports of oilfield machinery are negligible.

TA-W-21,204; Merritt Trucking Co., Tye, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,351; Gruss Petroleum Management, Midland, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,048; Alliance Machine Co., Alliance, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,163; Caren Lynn, New York, NY

Investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,171; Courtland Manufacturing, New York, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the

relevant period as required for certification.

TA-W-21,197; J & C Manufacturing, New York, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,202; Manhattan Plaza, New York, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-21,570; KRW Energy Systems, Inc., Madison, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,730; Kirwood Oil and Gas, Casper, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,245; United Technologies Automotive, Inc., Dearborn, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,156; Jennings Hellms Trucking, Inc., Indiana, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,001; Wintershall Oil and Gas Corp., Englewood, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,643; Magnum Marine Limited II, Conroe, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,397; Arco Oil and Gas Co., Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,604; Coronado Transmission Co/Energy Gathering, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,159; Lamb Enterprises, Lone Star, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,107; Armco, Inc., Gainesville, TX

U.S. imports of oilfield machinery are negligible.

TA-W-22,232; Homco International, Williston, ND and Dickinson, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,135; Exxon Production Research Co., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-22,214; Conoco, Inc., Production Engineering and Research, Denver, CO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-21,431; Harold Krueger Co., Natoma, KS

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,524; Manley Performance Products, Bloomfield, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,410; Dranetz Technologies, Inc., Edison, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,639; Lone Star Steel Co., Lone Star, TX

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-21,125; Offshore Navigation, Inc., Harahan, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,979; Offshore Exploration & Production, Houston, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,049; Amerada Hess Corp., Southeast Production Region, Lafayette, LA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,050; Amerada Hess Corp., Gulf Coast Exploration, Lafayette, LA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,253; Amerada Hess Corp., Northern Production Region, Williston, ND

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-21,321; Amerada Hess Corp., Onshore Exploration, Houston, TX

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-21,322; Amerada Hess Corp., Onshore Exploration Administration, Houston, TX

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-21,418; Exeter Drilling Co., Midland, TX

Increased imports did not contribute importantly to workers separations at the firm.

I hereby certify that the aforementioned determinations were issued during the months of December 1988 and January 1989. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: February 17, 1989.

[FR Doc. 89-5035 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,592]

W.E. Myers Drilling Co., Midland, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Workers Adjustment Assistance on January 4, 1989. The

Certification will be published in the Federal Register soon.

The company provided new information to the Department which shows that Myers Drilling Company of Midland, Texas purchased the subject company on July 1, 1986. Myers Drilling Company meets the requirements for a successor-in-interest firm. Investigation findings show that additional worker separations occurred at the successor-in-interest firm.

Accordingly, the termination date of September 1, 1986 in the subject certification is deleted so as to include worker separations of Myers Drilling Company, Midland, Texas, the successor-in-interest firm.

The amended notice applicable to TA-W-21,592 is hereby issued as follows:

"All workers of W. E. Myers Drilling Company, Midland, Texas who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC., this 6th day of February 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS

[FR Doc. 89-5036 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-30-M

[SGA-DAA-89-101]

Senior Community Service Employment Program; Solicitation for Grant Applications From American Indian and Pacific Island/Asian American National Aging Organizations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; solicitation for grant applications.

SUMMARY: The Employment and Training Administration announces a Solicitation for Grant Applications from public or nonprofit national Indian aging organizations and from public or nonprofit national Pacific Island/Asian American aging organizations to provide employment services on a nationwide basis to older Indians and older Pacific Island/Asian Americans who have low incomes and are 55 years of age or older. Grant awards will be part of the Senior Community Service Employment Program, and operations will begin on July 1, 1989.

DATES: No exceptions to the mailing and hand-delivery conditions set forth in this Notice will be granted. *Applications not meeting the conditions set forth in this Notice will not be accepted.* To receive consideration, applications must be submitted at the address, dates and times listed below:

Applications Mailed: Applications submitted by mail must be certified or registered mail, return receipt requested, and must be postmarked no later than April 17, 1989. The term "postmark" means a printed, stamped or otherwise placed impression (exclusive of postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

Applications Hand-Delivered: Applications will be accepted daily between the hours of 8:15 A.M. and 4:45 P.M., Eastern Standard Time, but no later than 4:45 P.M., Eastern Standard Time on the working day after the closing date, i.e., April 18, 1989.

ADDRESS: Mail or hand-deliver three (3) copies of the complete application to: James C. DeLuca, Grant Officer, Division of Acquisition and Assistance, Office of Financial and Administrative Management, Employment and Training Administration, U.S. Department of Labor, Room C-4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Ms. Doris W. Smith. Reference: SGA-DAA-89-101.

FOR FURTHER INFORMATION CONTACT: Ms. Doris W. Smith, Division of Acquisition and Assistance, Telephone: (202) 535-8702.

SUPPLEMENTARY INFORMATION: The Older American Community Service Employment Program Act, Title V of the Older Americans Act of 1965, as amended, establishes a program of community service employment and other services for older Americans, 42 U.S.C. 3056 *et seq.* The program, the Senior Community Service Employment Program (SCSEP), is operated through grants made by the Employment and Training Administration (ETA) of the Department of Labor (DOL). The Older Americans Act Amendments of 1987 amended Section 506(a)(1)(A) of the Older Americans Act of 1965 to require the DOL to fund national aging organizations representing Indians and Pacific Island/Asian Americans. Efforts will be made to fund two organizations, one for each of the two groups, to begin operations in Program Year (PY) 1989 (July 1, 1989—June 30, 1990). This Notice makes known the laws, guidelines, specifications and schedules which define the eligibility and other requirements with which national Indian and Pacific Island/Asian American aging organizations must comply for the preparation and submission of a funding application to the DOL.

This Notice consists of: Part I—Introduction, Part II—Solicitation for Grant Application (SGA) and Part III—Submission of Funding Applications. Part II constitutes an invitation from DOL for public or nonprofit national Indian and Pacific Island/Asian American aging organizations with the demonstrated ability to provide employment services to older Indians and older Pacific Island/Asian Americans to submit applications for the PY 1989 Older Americans Act, Title V SCSEP program.

Part III provides information on the submission of applications and the notification of selection.

Part I—Introduction

The DOL announces competitive application instructions only for public and nonprofit national Indian and Pacific Island/Asian American aging organizations having the demonstrated ability to provide employment services on a nation-wide basis to older Indians and older Pacific Island/Asian Americans. Efforts will be made to fund two such organizations, one for each group, for PY 1989 (July 1, 1989—June 30, 1990). Applicants selected for funding will be designated as grantees for a one-year period, PY 1989, if applicable statutory, regulatory and guideline requirements are met, an acceptable application in response to the SGA (Part II of this Notice) is submitted, and funds are available.

There are three considerations involved in setting the general parameters for this competitive effort. They are:

(1) *Site Selection.* The DOL considered three factors in identifying the States in which the two new sponsors selected will implement their SCSEP projects:

(a) *The amount of PY 1989 funds allocated to each State which is in excess of the 1988 level.* Section 506(a) of the Older Americans Act, in conjunction with any governing language in each fiscal year's appropriation Act, provides the formula which determines the distribution of SCSEP funds among the States. The formula determines the amount of funds allotted to each State and thereby the number of SCSEP positions available in each State. For this reason, the new projects will be in States which will receive the largest proportionate increase in PY 1989 funds over PY 1988 in order to minimize any adverse effect on the already established projects of the current SCSEP sponsors. For example, funding projects in States with small funding increases would require

eliminating already established projects with the attendant enrollee disruption.

(b) *Addressing the statutory equitable distribution requirement.* Section 506(c) of the Older Americans Act requires the equitable distribution of resources among all areas in each State, including the balance between rural and urban areas. This requirement further supports the establishment of the new projects in those States having a larger proportionate increase in PY 1989 funds since new positions can be placed in under-served areas without disrupting existing projects.

(c) *Presence of the Population Groups.* The final site selection consideration was the existence within a State of adequate numbers of the target population to warrant placing a project there.

After weighing all of the above considerations, DOL has determined that the new national Indian aging organization should establish its projects in the States of Texas and Oklahoma. The new national Pacific Island/Asian American organization should establish its projects in the States of California and Oregon. These States were selected because they meet the site selection criteria. The particular State combinations were also based on geographic proximity to provide a greater opportunity for administrative efficiency.

(2) *Funding Level.* The Department has established the PY 1989 funding level for the two new aging organizations at $1 million each. This amount will provide each organization with 193 positions and will allow each to develop their programs in an orderly fashion without the administrative problems associated with establishing larger programs. Another factor considered in determining the funding level was the general incidence of the two new groups in the total eligible population.

Background

The SCSEP fosters and promotes useful part-time opportunities in community service activities for persons with low incomes who are fifty-five years old or older. The Employment and Training Administration (ETA) of DOL operates the program by means of grants with eligible organizations, such as governmental entities and eligible public and private nonprofit agencies and organizations. Those entities which are eligible to respond to this SGA are encouraged to study the Act.

Summary of Eligibility Requirements

Agencies and organizations eligible to respond to this SGA are those that are:

1. Public or nonprofit national Indian and Pacific Island/Asian American aging organizations, other than political parties, and incorporated as such, and

2. National in scope with the ability to provide employment services to the eligible clientele on a nation-wide basis. National is defined as having, either directly or through local chapters or affiliates, conducted substantial business in at least five different States. While DOL reserves the right to determine what constitutes "substantial business," the meaning of the term does include government-assisted or privately-financed programs conducted for the community welfare. The term does not mean attendance or representation at meetings, conferences, conventions, seminars or the like, and

3. Are able to meet the requirements of sections 502(b) and 506(a) of the Act.

Since the SCSEP is a part-time employment and training program for low income persons who are 55 or older, organizations which have not operated employment and training programs should consider the cost of preparing an application against the low potential for successfully competing under the provisions of this SGA. (See Part II—Solicitation for Grant Applications for the specific rating criteria against which all applications will be rated).

Part II—Solicitation for Grant Application (SGA)

The DOL is soliciting applications for grants under the provisions of Title V of the Older Americans Act of 1965, as amended, to provide part-time employment services to eligible older individuals. The geographic areas for which the national Indian and Pacific Island/Asian American aging organizations can apply are limited under this SGA. The States and the resources available for those States are:

NATIONAL INDIAN AGING ORGANIZATIONS

State	Funds	SCSEP positions
1. Texas	$804,841	154
2. Oklahoma	204,261	39
Total	1,009,102	193

NATIONAL PACIFIC ISLAND/ASIAN AMERICAN AGING ORGANIZATIONS

State	Funds	SCSEP positions
1. California	$867,350	166
2. Oregon	139,877	27
Total	1,007,227	193

Review and Funding of Applications

Applications will be reviewed and rated by a competitive review panel, using the specific review standards cited in this Part II. Panel results are advisory in nature and are not binding on the Grant Officer. In addition, prior to the final selection of an applicant as a potential grantee, the DOL will conduct a responsibility review of the available records to establish the applicant's ability to administer Federal funds. The review will consider previous debts, evidence of fraud, if any, within the organization, previous audit findings, etc. This review is intended to establish overall responsibility to administer Federal funds and is independent of the competitive process. Applicants failing to meet this responsibility review will not be selected as potential grantees regardless of their standing in the competition.

Specific Rating Criteria

The rating criteria and the weights assigned to each are described below:

1. *Prior experience. 0–25 points.* The applicant's prior experience in conducting programs for older workers will be assessed.

Applicants who have demonstrated through prior experience the ability to effectively serve the older workers will be given the highest rating.

To assist the panel, applicants should describe in detail their past organizational experience. Emphasis should be placed on services to the older worker and prior experience with employment and training programs. Names, addresses and telephone numbers of individuals with other agencies who can provide factual information on the offeror's experience must be included.

2. *Administrative Capability.* (Organizational Capability) *0–20 points.* The applicant's apparent ability—based upon an assessment of the organizational structure, the resources of the applicant, and other available information, to undertake a project of the size and difficulty that the SCSEP poses.

3. *Staff Capability. 0–5 points.* The applicant should describe the qualifications of persons who will be employed should their organization be the successful applicant. Applicants are to provide job descriptions and selection criteria for all key professional positions, i.e., project director, program assistant, technical staff.

4. *Cost. 0–10 points.* This criteria will include consideration of the applicant's ability to meet program objectives

within the proposed geographic and administrative arrangement. It will also include an analysis of the budget information including the statutory 10-percent non-Federal share of the project.

5. *Potential Program Effectiveness. 0–40 points.* The narrative portion of each proposal will be assessed with regard to its consistency with the Act; the completeness and detail with which it has been prepared; the potential effectiveness; the provision of useful part-time employment for older low income persons; and the provision of training in comparison with competing grant applications. In this regard, the panel will consider such things as:

(1) Number and type of subsidized positions
(2) Enrollee wages and benefits
(3) Plans for permanent unsubsidized employment
(4) Proposed administrative structure
(5) Plans and procedures for subgranting and contracting, if any
(6) Coordination and cooperation with existing SCSEP projects within the proposed States
(7) Plans for enrollee recruitment and placement (job matching)
(8) Plans for enrollee training

Negotiation

At its discretion, the Department may negotiate cost, program matters and sub-State geographic locations with applicants. However, the government reserves the right to make an award without further discussion of proposals. Therefore, proposals should be submitted on the most favorable terms from both price and technical standpoints that the applicant can propose. The Department reserves the right to reject any and all proposals. Also, applicants are reminded that any proposal received will become part of the official file on the solicitation. Proposals which are accepted for consideration will not routinely be returned to the applicant. However, any unsuccessful applicant wishing to have its proposal returned may so request in writing within 30 dasys after grant award. All excess copies will be destroyed.

Limitations on Subgrantees and Contracts

Subgranting or contracting is permitted but: (1) Individual subgrants or contracts shall be confined to a single State, metropolitan, or rural area within a State; (2) National program administration cannot be delegated to another agency; and (3) Subsponsors must meet the requirements of the applicable administrative regulations. In addition, applicants which would use subgrants or contracts must define the standards against which possible subgrantees-contractors will be assessed prior to their selection as subsponsors.

Areas to be Served

Although applicants are limited in the States which they may serve, there are no limitations on the areas which they may propose to serve within the selected States. However, before a grant award is made, the DOL, ETA, reserves the right to specify which areas will be served. In preparing its proposal, applicants should identify the criteria which it will use in selecting its proposed project sites.

Single Point of Contact Clearance Procedures

Those organizations selected to act as national SCSEP sponsoring organizations will be required to follow Executive Order 12372 which implements the Single Point of Contact (SPOC) clearance procedures. However, those organizations submitting grant applications should not take steps to comply with these requirements until after they have been notified of their selection as a national SCSEP sponsor. In addition, selected sponsors will be required to coordinate with the State and Area Agencies on the Aging.

Content and Format of the Application

Exclusive of charts or graphs, letters of support, certifications, and other required papers, the application should not exceed 75 pages of unreduced double-spaced type.

A detailed budget is not required for this application. However, applicants must complete a planning budget, which consists of three cost categories; Administration, Enrollee Wages and Fringe Benefits and Other Enrollee Cost. A final budget will be negotiated later with the successful applicants selected for grant awards.

In preparing their applications and program approach, applicants must be aware of the SESEP's budgetary limits, including Administrative Cost that cannot exceed 13.5 percent, although a waiver up to a 15 percent cap is possible with an appropriate and compelling justification. See Section 502(c)(3) of the Act as amended. Enrollee Wages and Fringe Benefits can be no less than 75 percent of the Federal share, and the contribution of a non-Federal share of at least 10 percent of the total project cost is required.

Application Narrative

The application narrative format, which follows, must be utilized by the applicants. The application must contain the sections listed below. These sections relate to the rating criteria, and the review panel members will assess the proposed narrative portions of the application in making their ratings.

Section I—Needs and Objectives. Describe the need for the project and state its principal objectives. Supporting documentation from knowledgeable interests other than the applicant may be used to demonstrate the need. Any relevant data based on planning studies should be included or footnoted.

Generally, the project should be described in terms of the economic and employment needs of the target: low-income population (primarily Indian or Asian-Pacific Islanders), aged 55 and above. This eligible population should be further defined by the applicant. For example, the applicant should indicate what percentage of the eligible population is female, male, economically disadvantaged (below 100 percent of poverty), etc., the community service needs which enrollees can help meet, especially those which are of particularly high priority in the target group's community should be mentioned.

Section II—Results or Benefits Expected. Describe the results or benefits to be derived from the project, with particular regard to the benefits accruing to project enrollees. These include: (1) the enhancement of enrollees' income and employability; (2) the creation of employment opportunities for older, low-income persons; (3) the assistance to participants to become economically self-sufficient through unsubsidized employment; and (4) the provision of opportunities for participants which would not otherwise be available.

Describe the other benefits to be derived from the project. These will include: (1) the elimination of artificial barriers to employment; (2) the general economic or social betterment of the community or communities in which the project is conducted; and (3) the enhancement of public or community services.

Section III—Approach. Section III requires information about the operations of the proposed project and the procedures the applicant will use to implement it. This section must consist of three subsections, each of which is discussed separately below:

a. *Plan of Action.* Provide a description of each project function or activity and the manner in which it will be carried out. The description must assure adherence to the guidelines for project operations found in the

regulations. Applicants must provide adequate descriptions for the DOL to clearly ascertain how the applicant will implement the project. The following functions or activities should be discussed separately:

(1) *Recruitment and selection of enrollees.* Indicate the methods and resources that will be used to recruit enrollees. Describe efforts to be used to assure priority enrollment for those most in need over 60.

(2) *Eligibility for Enrollment in SCSEP—Special Responsibilities of Project Sponsor.* All sponsors shall be required to certify the income of each enrollee. Indicate how the age and income of enrollees will be certified.

(3) *Physical examinations.* Describe the arrangements which will be made to provide initial physical examinations and periodic annual physical examinations for enrollees.

(4) *Orientation.* Describe enrollee and host agency orientation procedures, including enrollee and agency responsibilities, permissible political activities, etc.

(5) *Assessment.* Describe the procedures to be followed in assessing the job aptitudes, job readiness, and job preferences of enrollees, as well as their potential for transition into private or unsubsidized employment. Supportive service needs of enrollees should also be addressed. Such assessments should be made no less frequently than once a year.

(6) *Training in Preparation for Community Service Employment.* Describe how job-related training prior to community service employment, if any, will be provided to enrollees.

(7) *Placement into Subsidized Employment.* Describe efforts to place enrollees into subsidized employment. Include the following: (i) the types of community service activities which will be emphasized in assigning enrollees to subsidized jobs; (ii) methods used to match enrollees with subsidized jobs; (iii) the extent to which enrollees will be placed in work assignments involving the administration of the project itself; (iv) the types of host agencies to be used, if any, and the procedures and criteria for selecting work assignments; (v) average number of hours in enrollee work week; (vi) the average enrollee wage rate; (vii) enrollee fringe benefits; and (viii) the procedures for assuring enrollees are given adequate worksite supervision.

(8) *Training during community service employment and for other employment.* Describe the training for enrollees after they have been placed into subsidized jobs. (It should not exceed 260 hours of training during the grant period.) Training may be related to the SCSEP job duties or it may be developmental, i.e., the skills developed will enhance the enrollee's unsubsidized employment opportunities.

(9) *Supportive services.* Describe the supportive services to be provided enrollees.

(10) *Enrollee transportation.* Describe the arrangements which will be made to provide transportation assistance to enrollees and the reimbursement rate for transportation, if any.

(11) *Placement into private or other unsubsidized employment.* Describe in detail the steps which will be taken to move or place enrollees into unsubsidized employment and subsequent followup efforts. Include cooperative measures that will be taken with the Job Training Partnership Act (JTPA) sponsors to place enrollees.

(12) *Enrollee Complaint Resolution.* Describe fully the system of due process which will be used in cases in which an adverse action is contemplated against an enrollee, or in cases in which an applicant for enrollment wishes to dispute an unfavorable determination of eligibility.

(13) *Temporary enrollees.* Describe utilization of temporary enrollees, if any, and the anticipated number of temporary enrollees to be hired. Indicate the following:

a. How enrollees will be notified of temporary status.

b. How temporary status of enrollees will be designated in enrollee records.

(14) *Maintenance of Effort (MOE).* Describe steps to be taken to assure that program enrollees will not be used to replace other employed workers or workers on layoff. Section 502(b)(1)(G) of the Older Americans Act.

b. *Performance Goals.* Specify the following: (1) the number of authorized community service employment positions under the project; and (2) the number of enrollee unsubsidized placements to be achieved during the funding period. The goal for unsubsidized placements, 20 percent, shall be based on the number of authorized positions in the project. (3) *Indicate the projected date by which the new positions will be filled.*

c. *Coordination and Cooperation.* Describe the cooperative relationships and working linkages which have been, or will be established with other employment related programs and agencies (including other SCSEP projects, JTPA sponsors, Job Corps Centers and State Employment Security Agencies), and with agencies concerned with or experienced in the problems of the aging (including State and Area Agencies on Aging). Also, describe the plans to work with any labor organization which is necessarily connected with the project. Indicate any other cooperative or coordinative relationships that will assist program performance, and assure equitable access to the program among cities, counties or other appropriate jurisdictions.

Section IV—Geographic Areas to be Served. List the States, cities and counties (including rationale for selection of the sub-State locations), where the project or its subprojects will be conducted. Include the number of SCSEP authorized part-time positions to be established in each of the jurisdictions. For multi-State projects, the distribution of authorized positions should be listed for each State along with the geographic area (generally counties) served within the State. For those applicants with a project located in a city but also serving surrounding counties (or other jurisdictions), the surrounding counties (or jurisdictions) should be listed with the number of proposed positions in each. Only those States specified previously will be available for the new sponsors.

Section V—Program Administration.

a. *Organizational Structure:* Describe the organizational structure of the project, including a description of the mission and function of each organizational unit connected with the project. Identify and include brief and relevant job descriptions and qualifications for all administrative and professional technical staff.

b. *Subproject Management:* Identify all subprojects to be carried out under contract or subgrant, and provide justification for the use of these organizations.

Describe the administrative mechanisms of subprojects including: (1) the organizational structure and function of subproject organizations; (2) the staff assigned to work on the subprojects; and (3) the amount of time designated for the staff to work on the subproject.

c. *Training of subproject (local) staff:* Describe the training which will be used to improve the knowledge, skills, and abilities of subproject (local) staff. Include where applicable a chart describing the proposed training with dates, content, and potential participation.

d. *Project Monitoring:* Explain fully the internal procedures to be used by the sponsoring organization in monitoring and assessing project activities to determine if the project is being adminstered in accordance with federal guidelines and regulations, and if project goals and timetables are being met.

Include in this explanation: (1) *how* frequently monitoring/evaluation visits will be made to local projects; (2) *who* will be responsible for monitoring/evaluation; (3) *what* criteria will be used to monitor and evaluate project activities; (4) *what* methods will be used for prescribing remedial action when necessary; and, (5) *what* followup procedures will be used to ensure that any problem identified has been remedied. Please indicate that all *written* monitoring reports and subsequent *followup actions* will be made a part of the permanent files.

e. *Financial monitoring:* Describe how the financial management system of local subprojects will be monitored. Included in this explanation should be: (1) *who* will be responsible for monitoring subsponsor expenditures; (2) *how* frequently monitoring of expenditures will be done; (3) *what* followup procedures will be used.

Describe audit procedures, including plans to audit local projects as well as plans to audit the project headquarters.

f. *Reports:* Upon grant award, successful applicants will be required to submit quarterly program and financial reports. In general, describe how this collection of information will be achieved and what organizational units will be involved.

Section VI—Additional Cost Considerations. All SCSEP funds must be spent on behalf of the State for which they are obligated. However, an appropriate protion of the administrative cost may be charged for the operations of the national headquarters and staff. Such cost must benefit the individual States.

Budget Information

The applicant must prepare a proposed budget using the forms prescribed by the Office of Management and Budget Circular A-102, (A copy of the SF 424A form is attached).

Sections A and B of the Budget Information form should be completed and include budget estimates for the entire grant period. In Section A and B, *three* basic grant functional areas must be identified. They are (1) Administration; (2) Enrollee Wages and Fringe Benefits; and (3) Other Enrollee Costs. Costs attributable to these functional areas are described as follows:

Administration: The cost category of administration shall include, but shall not be limited to, costs of providing and costs associated with providing:

- Administration, management and direction of a project or subproject;
- Reports on evaluation, management, community benefits, and other aspects of project or subproject activity;
- Accounting and management information systems;
- Training and technical assistance for project or subproject sponsor staff;
- Bonding;
- Audits; and
- Services or other benefits accruing to a project or subproject as a result of allowable indirect cost charges.

Enrollee wages and fringe benefits: The cost category of enrollee wages and fringe benefits shall include wages paid to enrollees for hours of community service employment and the costs of fringe benefits actually provided.

Other enrollee costs: The cost category of other enrollee costs shall include the costs of providing and the costs associated with providing those functions, services, and benefits not categorized as administration or enrollee wages and fringe benefits. Other enrollee costs shall include, but shall not be limited to, the costs of providing and the costs associated with providing;

- Recruitment and selection of eligible enrollees as provided in this part;
- Physical examinations for enrollees and eligible applicants who are being selected for enrollment;
- Orientation of enrollees and host agencies;
- Assessment of enrollees for participation in community service employment, and evalution of enrollees for continued participation or transition to unsubsidized employment;
- Development of appropriate community service employment assignments;
- Supportive services for enrollees including transportation, provided that when enrollee transportation is by privately-owned vehicle, reimbursement from Title V funds shall not exceed the current mileage rate established by Federal travel regulations;
- Training for enrollees; and
- Development of unsubsidized employment opportunities for enrollees.

Applicants should ensure that the proportional distribution of the requested Federal funds among these three functional areas meet the program requirements.

Instructions for Completing the Budget Form. The following are specific instructions for completing Sections A and B of the budget form which is the Standard Form (SF-424-A). It is not necessary to complete the other sections of the form.

"Budget Information Form" (SF-424-A)—*"Section A—Budget Summary"—Lines 1-4, Column (a) and (b).*

Under Column (a), enter the following: Line 1-"Adminstration", Line 2-the letters "EW/FB" (which refers to Enrollee Wages and Fringe Benefits); Line 3-"OEC" (which refers to Other Enrollee Costs). Under Column (b) on Line 1, enter "17.235" which is the Domestic Assistance Catalogue number.

Line 1-4, Column (c) through (g). Leave Columns (c) and (d) blank. For each line entry under Column (a), enter in Columns (e), (f), and (g) the appropriate amount of funds needed to support the project for the grant period. Entries in Column (e) are Federal, in Column (f) show only the non-Federal share. Column (g) reflects the total of (e) and (f).

Line 5. Show totals for all columns used. Applicants are reminded that the non-Federal share must be no less than 10 percent of the total cost of the project.

"Section B—Budget Categories". In the column headings at Line 6 titled "Object Class Categories" (1) through (3), enter the titles of the grant functional areas (i.e., Administration, EW/FB, and OEC) shown on Lines 1-4, Column (a), Section A. For each functional area fill in the total requirements for funds (Federal plus non-Federal) by object class categories.

Lines 6a through 6h. Show the estimated amount (include the Federal and non-Federal share) for each direct object class category under each column used. All costs to be incurred under contracts or subgrants should be reflected in line 6f (Contractual). It should be noted that the costs to be incurred under individual contracts or subgrants must be properly attributed among the three basic functional areas (i.e., Administration, EW/FB, and OEC). It should be further noted that under the EW/FB column (Enrollee Wages and Fringe Benefits), entries may be made only against three object class categories: Personnel (Enrollee Wages), Fringe Benefits (Enrollee Fringe Benefits), or Contractual when funds for enrollee wages and fringe benefits are to be included in contracts or subgrants.

Line 6i. Show the total of entries made for lines 6a through 6h in each column.

Line 6j. Show the amount of indirect costs. All indirect costs must be attributed to the column headed "Administration."

Line 6k. Enter the totals of the amounts indicated on lines 6i and 6j. For all applications, the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5.

Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Under the project narrative statement identify the nature and source of such income.

Section VI—Other Accompanying Documents. The application should also be accompanied by the following:

(1) A certificate from a Certified Public Accounting firm attesting to the adequacy of the applicant's financial system.

(2) If available, a recent annual report.

(3) A brief description of the applicant's organizational structure including an organization chart.

(4) A brief statement (1 or 2 pages) of the applicant's own organizational resources which can be used to support the SCSEP.

(5) A brief statement describing the applicant's relationship to the minority groups which it proposes to serve.

(6) A statement from the U.S. Internal Revenue Service certifying the applicant's status as a non-profit entity.

(7) Documentation to support the requirement that the applicant is an organization with the ability to provide employment and training services. This should include identification of specific prior projects, contacts and telephone numbers which indicate the applicant's capacity to operate an employment and training program.

(8) *Qualifications Statement.* The application must be accompanied by a signed statement from the applicant indicating that it has conducted substantial business in at least five different States. This statement must identify the States and provide a brief description of the projects, programs or other activities carried out in those States. The names, titles and phone numbers of persons with direct knowledge of the applicant's activities should also be provided with the statement.

A completed application shall consist of a narrative, an estimated budget and the various certifications and documents mentioned above.

Part III—Submission of Funding Application. Three copies of the complete application shall be submitted either by mail or hand-delivery. As noted earlier in this announcement, mailings must be posted by registered or certified mail, return receipt requested, no later than April 17, 1989. All hand-delivered applications will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Standard Time. A receipt will be provided bearing the time and date of delivery. No hand-deliveries will be accepted after 4:45 p.m., Eastern Standard Time on the working day after the closing date, i.e., April 18, 1989. No exceptions to these mailing and hand-delivery conditions will be granted. Applications not meeting these conditions, including the provision of attachments, will not be accepted.

Funding applications must be mailed or hand-delivered to: James C. DeLuca, Division of Acquisition and Assistance, Office of Financial and Administrative Management, Employment and Training Administration, U.S. Department of Labor, Room C-4305, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Doris W. Smith, Reference: SGA-DAA-89-101.

Notification of Selection

The following conditions are applicable:

(a) Respondents to this SGA which are selected as potential grantees will be notified by the DOL. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant. It will establish a reasonable time and place for the negotiation and will indicate the State(s) or area(s) to be covered by the grant. Grants will be awarded for the period July 1, 1989 to June 30, 1990.

(b) In the event that no grant applications are received or those received are deemed to be unacceptable, or if a grant agreement is not successfully negotiated, the DOL may: (1) designate another organization or organizations or (2) reopen the area for competitive bidding.

(c) An applicant whose grant application is not selected by the DOL to receive funds will be so notified in writing.

Signed at Washington, DC this 28th day of February 1989.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Wilbert F. Solomon,

Chief, Division of Older Worker Programs.

James C. DeLuca,

Grant Officer, Division of Acquisition and Assistance.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

[FR Doc. 89-5022 Filed 3-2-89; 8:45 am]
BILLING CODE 4510-30-C

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1989 Agricultural Adverse Effect Wage Rates; and Allowable Charges for Agricultural and Logging Workers' Meals

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1989.

SUMMARY: The Director, U.S. Employment Service, announces 1989 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services and logging work may levy upon their workers when they provide three meals per day. AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

Although the Department's justification for its methodology for computing AEWRs is presently being litigated in the U.S. Court of Appeals for the District of Columbia Circuit, the Department considers itself compelled to publish these AEWRs at the present time on the basis of the currently applicable methodology. The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

EFFECTIVE DATE: March 3, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Room N–4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–535–0163 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States, unless the petitioner has applied to the Department of Labor (Department) for an H–2A labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1186.

On June 1, 1987, the Department published an interim final rule at 20 CFR Part 655, Subpart B, 52 FR 20496, for the H–2A program. The interim final rule requires that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9) (1988). Reference should be made to the preamble to the interim final rule, which explains in great depth the purpose and history of AEWRs, the Department's discretion in setting AEWRs, and the new AEWR computation methodology at 20 CFR 655.107(a) (1988). 52 FR at 20502–20505.

The AFL–CIO subsequently sued the Department to invalidate the interim final 20 CFR 655.107(a). On December 22, 1987, in that case, the United States Court of Appeals for the District of Columbia Circuit reversed a lower court decision that had invalidated the interim final 20 CFR 655.107(a). *American Federation of Labor and Congress of Industrial Organizations* v. *Brock*, 835 F. 2d 912 (D.C. Cir. 1987), *rev'g*, 668 F. Supp. 31 (D.D.C. 1987). Also vacated was that portion of the lower court decision that had stayed implementation of the June 1, 1987, interim final AEWR methodology in 20 CFR 655.107(a). 835 F. 2d at 913 n. 2.

However, the D.C. Circuit held that the interim final rule did not contain information sufficient for the court to "discern the reasonableness of the action without further explanation" and remanded the matter "to the Department for a more adequate explanation of its actions * * *." 835 F. 2d at 913 n. 2, 919, and 920. The D.C. Circuit, therefore, remanded the rulemaking for DOL to provide a more reasoned explanation for why it chose in the June 1, 1987, methodology to discontinue what the Court of Appeals viewed as the prior practice of providing for an enhancement to correct for the past employment of legal and undocumented aliens.

Upon remand, the U.S. District Court for the District of Columbia ordered DOL's "reasoned explanation" to be issued on or before April 30, 1988, unless otherwise ordered. *AFL–CIO* v. *Brock*, Civil Action No. 87–1683 (Order, D.D.C. March 25, 1988). DOL submitted the expanded explanation to the District Court in April 1988.

Additionally, DOL published the expanded explanation in the **Federal Register** as a new Notice of Proposed Rulemaking (NPRM). 52 FR 43722 (October 28, 1988). Interested parties were invited to submit written comments on the NPRM through November 28, 1988. *Id.*

On December 20, 1988, the U.S. District Court for the District of Columbia filed an opinion and order, finding that the April 1988 submission to it from DOL was invalid and again enjoined the June 1, 1987, interim final 20 CFR 655.107. The court did not rule on the October 28, 1988, NPRM.[1]

The December 20, 1988, order of the U.S. District Court regarding the June 1, 1987, AEWR methodology and the April 1988 submission has been stayed indefinitely by the U.S. Court of Appeals for the District of Columbia Circuit. *AFL-CIO* v. *McLaughlin*, Case No. 89–5001 (D.C. Cir. January 13, 1989) (Order granting stay pending appeal).

Despite this litigation, the Department is still faced with the responsibility to continue to administer the H–2A program. Inasmuch as the U.S. Court of Appeals stayed the U.S. District Court injunction of the AEWR computation methodology in 20 CFR 655.107(a), 52 FR 20496, 20515 (June 1, (1987), that methodology remains in effect at the present time.

The Department has received H–2A labor certification requests for 1989, and some have been granted for work beginning as early as mid-March and the Department has received requests to publish 1989 AEWRs. The Department believes that the sound administration of the program requires the use of the current Department of Agriculture data as they become available. For this reason, the Department is establishing 1989 AEWRs.

Regulations require the Director of the U.S. Employment Service to publish USDA wage data as AEWRs and publish allowable charges logging employers and H–2A agricultural employers may levy upon their workers for the provision of three meals per day. 20 CFR 655.107(a); 20 CFR 655.102(b)(4);

[1] In a separate opinion, the District Court on the same date remanded to DOL the H–2A program's "piece-rate regulation", 20 CFR 655.102(b)(9)(ii). *AFL-CIO* v. *McLaughlin*, Civil Action No. 87–1683 (Opinion and Order, filed December 20, 1988). That order has been stayed indefinitely by the U.S. Court of Appeals for the District of Columbia Circuit. *AFL-CIO* v. *McLaughlin*, Case No. 89–5001 (D.C. Cir. February 6, 1989) (Order granting motion to enlarge stay pending appeal).

20 CFR 655.111(a); 20 CFR 655.202(b)(4); and 20 CFR 655.211(a). The U.S. Department of Agriculture recently announced its wage data in the publication *Farm Labor*; these data produce higher AEWRs for the majority of States. The Department recognizes that the AEWRs published in this notice may be affected by the U.S. Court of Appeals' decision on the merits of the above-referenced litigation. However, in light of the above, the Department believes that sound administration of the H–2A program requires the publication of the 1989 AEWRs at this time.

A. Adverse Effect Wage Rates (AEWRs) for 1989

Adverse effect wage rates (AEWRs) are the minimum wage rates which the Department has determined must be offered and paid to U.S. and alien workers by employers of non-immigrant (H–2A) agricultural workers. The Department emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR Part 655, Subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA) based on the USDA quarterly wage survey (USDA does not provide data on Alaska). 20 CFR 655.107(a) (1988), 52 FR 20496, 20515 (June 1, 1987).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Acccordingly, the 1989 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—1989 ADVERSE EFFECT WAGE RATES (AEWRS)

State	1989 AEWR
Alabama	$4.12
Arizona	4.61
Arkansas	3.91
California	5.57
Colorado	4.49
Connecticut	4.73
Delaware	4.73
Florida	5.28
Georgia	4.12
Hawaii	7.37
Idaho	4.05
Illinois	4.79
Indiana	4.79
Iowa	4.50
Kansas	4.72
Kentucky	4.22
Louisiana	3.91
Maine	4.73
Maryland	4.73
Massachusetts	4.73
Michigan	4.24
Minnesota	4.24
Mississippi	3.91
Missouri	4.50
Montana	4.05
Nebraska	4.72
Nevada	4.49
New Hampshire	4.73
New Jersey	4.73
New Mexico	4.61
New York	4.73
North Carolina	4.27
North Dakota	4.72
Ohio	4.79
Oklahoma	4.45
Oregon	5.09
Pennsylvania	4.73
Rhode Island	4.73
South Carolina	4.12
South Dakota	4.72
Tennessee	4.22
Texas	4.45
Utah	4.49
Vermont	4.73
Virginia	4.27
Washington	5.09
West Virginia	4.22
Wisconsin	4.24
Wyoming	4.05

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4); 20 CFR 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) (1988) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) (1988) to covered H–2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the 12-month percent change in the CPI for All Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the 12-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that.

The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1988 rates were published in a notice on March 15, 1988, at 53 FR 8517.

DOL has determined the percentage change between December of 1987 and December of 1988 for the CPI–U for Food was 5.2%. Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1989 are as follows: (1) for 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $5.72 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $7.16 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 23rd day of February, 1989.

Robert A. Schaerfl,

Director, U.S. Employment Service.

[FR Doc. 89–5023 Filed 3–2–89; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

NEW JERSEY:
NJ89-2 (Jan. 6, 1989) ..... p.617.

Volume II

ILLINOIS
IL89-1 (Jan. 6, 1989) ..... pp. 70-73, pp. 76-78, 82.
IL89-2 (Jan. 6, 1989) ..... pp. 98-103.
IL89-3 (Jan. 6, 1989) ..... pp. 116-117.
IL89-4 (Jan. 6, 1989) ..... pp. 122.
IL89-5 (Jan. 6, 1989) ..... pp. 128.
IL89-6 (Jan. 6, 1989) ..... pp. 134.
IL89-7 (Jan. 6, 1989) ..... pp. 138-140.
IL89-8 (Jan. 6, 1989) ..... pp. 146-148.
IL89-9 (Jan. 6, 1989) ..... pp. 152-153.
IL89-11 (Jan. 6, 1989) ..... pp. 162, 164.
IL89-12 (Jan. 6, 1989) ..... pp. 168-169.
IL89-13 (Jan. 6, 1989) ..... pp. 180-182.
IL89-14 (Jan. 6, 1989) ..... pp. 192, 194.
IL89-15 (Jan. 6, 1989) ..... pp. 202-204.
IL89-16 (Jan. 6, 1989) ..... pp. 212-214.
IL89-17 (Jan. 6, 1989) ..... pp. 222-228, pp. 230-232.

MISSOURI:
MO89-2 (Jan. 6, 1989) ..... pp. 648-651.

Volume III

UTAH:
UT89-1 (Jan. 6, 1989) ..... pp. 342, 350-350c.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 27th day of February 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-4936 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to the State plan which has

been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of the State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated October 26, 1987 from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to 29 CFR 1928.110, Field Sanitation, as published in the **Federal Register** (52 FR 16095) on May 1, 1987.

The amendment of Title 8 of the Alaska Agricultural Code 61.010(a) adds requirements for Field Sanitation wherever employees are required to perform agricultural activities or operations by hand or with hand tools; and (b) revokes a section which stated that the sanitation requirements in Alaska's occupational and industrial structures code also apply to all agricultural operations, including those where no industrial structures or employment-related housing exists.

This State standard, which is contained in Subchapter 14, was adopted on September 1, 1987, and became effective October 14, 1987. Notices of the State rulemaking were published in statewide media on July 24, 1987 and July 31, 1987. The public comment period was open for 32 days. Comments were not received.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is substantially identical to the Federal standard. Other than minor editorial changes, the only differences is that the Alaska Code includes farms with less than 11 employees. Alaska will use "State only" monies to inspect these establishments, which are not covered Federally because of a congressional appropriations rider. OSHA therefore approves the standard.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are at least as effective as the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective March 3, 1989. (Section 18, Pub. L. 91-596, 84 STAT. 6108 [29 U.S.C. 677])

Signed at Seattle, Washington this 24th day of November, 1987.

James W. Lake,

Regional Administrator.

[FR Doc. 89-5038 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-26-M

Alaska State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated May 2, 1988 from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to 29 CFR 1910.1028, Benzene, and 1910.1000, Table Z-2, as published in the **Federal Register** (52 FR 34562) on September 11, 1987.

This State standard, which is contained in Subchapter 04, was adopted on February 16, 1988, and became effective April 21, 1988. Notices of the State Rulemaking were published in statewide media on December 30, 1987 and January 6, 1988. The public comment period was open for 30 days. Written comments were not received. Public hearings were held February 1, 2, 3, 1988.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards. OSHA therefore approves these standards.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good causes which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional

Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation would be repetitious.

This decision is effective March 3, 1989.

(Section 18, Pub. L. 91-596, 84 STAT. 6108 [19 U.S.C. 677])

Signed at Seattle, Washington this 31st day of May, 1988.

Ryan E. Kuehmichel,

Acting Regional Administrator.

[FR Doc. 89-5039 Filed 3-2-89; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0900, Vol. 11, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct material are abnormal occurrences.

The report to Congress is for the third calendar quarter of 1988. The report identifies the occurrences or events that the Commission determiend to be significant and reportable; the remedial actions that were undertaken are also described. For the reporting period, there were no abnormal occurrences at nuclear power plants licensed to operate. There were two abnormal occurrences under other NRC-issued licenses: multiple medical therapy misadministrations at a single hospital and a medical diagnostic misadministration.

There was one abnormal occurrence reported by an Agreement State (Texas) involving a medical diagnostic misadministration.

The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG-0090, Vol. 11, No. 3 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, 5825 Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 28th day of February 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-4985 Filed 3-2-89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The U.S. Nuclear Regulatory Commission has recently submitted to the OMB for review the following for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 21, "Reporting of Defects and Noncompliance."

3. The form number if applicable: N/A.

4. How often the collection is required: As necessary in order to maintain the NRC informed of defects and noncompliances that may create a substantial safety hazard at facilities or activities licensed by the NRC.

5. Who will be required or asked to report: All directors and responsible officers of firms and organizations building, operating, or owning NRC licensed facilities as well as directors and responsible officers of firms and organizations supplying safety-related components and safety-related design, testing, inspection, and consulting services to NRC licensed facilities or activities.

6. An estimate of the number of responses: 300 annually.

7. An estimate of the average burden hours per response: 81 hours.

8. An estimate of the total number of hours needed to complete the requirement or request: 27,988 hours (300 reports at an average of 81 hours per response).

9. An indication of whether section 3504 (h), Pub. L. 9696-511 applies: Not applicable.

10. Abstract: 10 CFR Part 21 implements section 206 of the Energy Reorganization Act of 1974, as amended. It requires directors and responsible officers of firms and organizations building, operating, owning, or supplying safety-related components to NRC licensed facilities or activities to report defects and noncompliances that could create a substantial safety hazard at NRC licensed facilities or activities. Organizations subject to 10 CFR Part 21 are also required to maintain such records as may be required to assure compliance with this regulation.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION: Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, Paperwork Reduction Project (3150-0035), Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone (202) 395-3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 24th day of February 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-4982 Filed 3-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co. Consideration of Issuance of Amendment to Facility Operating License and Opportunity for hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-1

issued to Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Plant, located in Columbia County, Oregon. The request for amendment was submitted by letter dated September 9, 1988.

The proposed amendment would revise the pressurizer low-pressure safety injection setpoint from greater than or equal to 1765 psig to greater than or equal to 1807 psig. The licensee states that this new setpoint is necessary to accommodate a change to a different transmitter design used to measure narrow-range pressurizer pressure. The related allowable value would be changed from 1755 psig to 1799 psig. The proposed changes would modify Table 3.3-4, Engineered Safety Features Actuation System Instrumentation Trip Setpoints," of the technical specifications for Trojan.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 3, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. A person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call of Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Kinghton: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Leonard A. Girard, Esq., Portland General Electric Company, 121 SW. Salmon Street, Portland, Oregon 97204, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714 (a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Portland State University Library, 731 SW. Harrison Street, Portland, Oregon 97207.

Dated at Rovkville, Maryland, this 22nd day of February 1989.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director Project Directorate V Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89-4983 Filed 3-2-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Federal Procurement Policy Office

Issuance of Policy Guidance on the Buy American Act of 1988

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Notice of Issuance of Policy Guidance on the Buy American Act of 1988.

Background

The Buy American Act (the Act) was enacted in 1933 to ensure that Federal agencies gave domestic products priority in purchasing decisions. Over the years the determination of what constitutes a domestic unmanufactured product has been based simply on the geographic origin of the product. Determining what constitutes a domestic manufactured product has been more difficult, however, and has ultimately come to be based on where the final manufacturing occurred and where the cost of mining, producing, or

manufacturing the components of such a product was incurred. Depending on the method of acquisition and the agency involved, domestic products are given 6, 12, or 50 percent price evaluation preferences over foreign products in the award of Federal procurement contracts. Such price evaluation preferences are waived under certain conditions for signatory countries of the GATT Agreement on Government Procurement (the Agreement) and they do not apply to procurements conducted in accordance with Defense Department Memoranda of Understanding.

In 1988, the Act was amended by several sections of Title VII of Pub. L. 100–418 to include provisions prohibiting Federal agencies from purchasing products and services from individuals or organizations of (1) countries that signed but have not abided by the Agreement; (2) countries that signed and have abided by the Agreement, but which discriminate against U.S. products and services not covered by the Agreement in their government procurements (Note: The prohibition here only covers products and services not covered by the Agreement); and (3) countries that have not signed the Agreement and which discriminate against U.S. products and services in their government procurements. To fall into these latter two categories, the country's services and products must be acquired in significant amounts by the U.S. Government and it must maintain, in its government procurements, a significant and persistent pattern or practice of discrimination against U.S. products which results in identifiable harm to U.S. businesses. Identification of countries that are determined to discriminate within the meaning of the Act will be made no later than April 30, 1990. Enactment of these provisions marks the first time that the Act proscribes as well as prescribes Federal agency behavior and pertains to services as well as products.

In bringing services in the above described circumstances within the purview of the Act, the 1988 amendments also provided a rule for determining what constitutes foreign constuction services. They did not, however, define "construction services." Nor did they define "services other than construction services". The Administrator for Federal Procurement Policy was given the task of developing policy guidance on determining whether a contractor or subcontractor is a citizen or national of a foreign country or is owned or controlled directly or indirectly by citizens or nationals of a foreign country, for the purposes of the Act. The policy guidance is required to be issued not later than February 19, 1989 (i.e., 180 days after enactment of Public Law 100–418).

The Administrator therefore convened a public hearing on December 15, 1988. At this hearing, two witnesses presented views, ideas, and suggestions on the proposed policy guidance. Written statements of four others who were unable to speak at this public hearing were submitted for inclusion in the record.

Most comments focused on ways in which the illustrative list of what constitutes a "service other than a construction service" might be improved. As a result of these suggestions, several changes were made in the policy guidance. In addition, several of the commentators suggested that, as a matter of trade policy, it would be preferable to craft an exception to the proposed guidance on ownership or control where the foreign contractor or subcontractor would employ a majority of U.S. workers in the performance of the contract. It was concluded that, although the citizenship or nationality of a contractor's workers may be one of the factors considered in determining whether an exception to the statutory restrictions should be granted under sections 4(c) of 4(d) of the Act, it could not properly be used as a basis for determining that a contractor is not foreign owned or controlled and thus not subject to the Act at all.

After careful consideration of all comments duly received, the following policy guidance is hereby issued to Federal departments and agencies by the Office of Federal Procurement Policy.

Policy Guidance

1. *Question*—Do the amendments made to the Buy American Act of 1933 (the Act) by Section 7002 of Pub. L. 100–418 require Federal agencies to give preferences to domestic services in procurements?

Answer—No, the amendments made to the Act by Section 7002 of Pub. L. 100–418 do not extend the preferential purchase requirements of the Act to services. Instead, the amendments prohibit Federal agencies from procuring services as well as products from individuals or organizations of (1) countries that signed but have not abided by the Gatt Agreement on Government Procurement (the Agreement); (2) countries that signed and have abided by the Agreement, but which discriminate against U.S. products and services not covered by the Agreement in their government procurements. (Note: The prohibition here only covers products and services not covered by the Agreement); and (3) countries that have not signed the Agreement and which have been identified by the U.S. Trade Representative in the annual report on foreign discrimination pursuant to section 7003(d)(2)(C) of Pub. L. 100–418 and determined by the President to be subject to sanctions because of discrimination against U.S. products and services in their government procurements. To fall into categories 2 and 3 above, the country's services and products must be acquired in significant amounts by the U.S. Government and it must maintain, in its government procurements, a significant and persistent pattern or practice of discrimination against U.S. products which results in identifiable harm to U.S. businesses. Identification of countries within all three categories above is to be made annually no later than April 30 beginning in 1990. In summary, the Act as amended prohibits Federal agencies under certain conditions from procuring either services or products from individuals or organizations of countries subject to sanctions for discriminating against U.S. products and services in making their government procurements.

2. *Question*—Are there exceptions to the prohibitions on the procurement of services set forth in Section 7002 of Pub. L. 100–418?

Answer—Yes, the prohibitions do not apply to: (1) services procured and used outside the United States and its territories; and (2) services of least developed countries. Also, the President or the head of a Federal agency may exempt procurements from these prohibitions upon a determination that such action is necessary in the public interest, or to ensure adequate competition.

3. *Question*—When do the prohibitions on procurement by Federal agencies of services from individuals or organizations of specified countries go into effect?

Answer—The prohibitions on the procurement of services by Federal agencies from individuals or organizations of specified countries will not take effect until 60 days after the first annual report mandated by Section 7003 of Pub. L. 100–418 is submitted to Congress. This annually produced report will list the countries that discriminate against U.S. products and services in making their government procurements. For some specified countries that are signatories of the Gatt Agreement on Government Procurement, prohibitions imposed by the President would go into

effect only after dispute resolution procedures had failed to produce a settlement within one year of their initiation.

4. *Question*—Do the prohibitions on the procurement of services from individuals or organizations of specified countries apply to grants? Do the prohibitions apply to contracts awarded by grantees using grant funds?

Answer—No, the prohibitions pertain only to services provided by contractor and subcontractors under procurement contracts. They do not pertain to services provided by grantees, contractors, or subcontractors using grant funds.

5. *Question*—What constitute "construction services" for purposes of implementing the Act as amended by Section 7002 of Pub. L. 100–418?

Answer—"construction services" means construction, alteration, or repair as defined in Subpart 22.4 of the Federal Acquisition Regulation (FAR), 48 CFR 1, 22.41. "construction services" do not include services provided incidental to the supply of a product, provided that the value of the incidental services does not exceed the value of the product being delivered.

6. *Question*—What constitute "foreign" construction services under the provisions of the Act as amended by Section 7002 of Pub. L. 100–418?

Answer—"Foreign" construction services are those services described in the answer to Question 5 above that are provided by an individual acting as a contractor or subcontractor who is a citizen or national of a country subject to sanctions, or an organization acting as a contractor or subcontractor where—

(A) 50 percent or more of the voting stock is owned by one or more citizens or nationals of a country subject to sanctions;

(B) The title to 50 percent or more of the stock is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of a country subject to sanctions;

(C) 50 percent or more of the voting stock is vested in or exercisable on behalf of one or more citizens or nationals of a country subject to sanctions;

(D) In the case of a corporation—

(i) The number of its directors necessary to constitute a quorum are citizens or nationals of a country subject to sanctions; or

(ii) The corporation is organized under the laws of a country or any subdivision, territory, or possession thereof that is subject to sanctions; or

(E) In the case of an individual or organization who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

7. *Question*—What constitute "services other than construction services" for purposes of implementing the Act as amended by section 7002 of Pub. L. 100–418?

Answer—"Services other than construction services" include all services other than those described in the answer to Question 5 above where work is performed by manual, clerical, technical, or professional labor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. This includes, but is not limited to, the following:

1. Research and development (R&D) as defined in the Federal Procurement Data System Product and Service Codes, Section I, Part A;
2. Special studies and analyses—Not R&D;
3. Architect and Engineering Services;
4. Surveying and mapping services;
5. Automatic data processing and telecommunication services;
6. Brokering and appraising services;
7. Natural resources and conservation services;
8. Environmental systems protection;
9. Social services;
10. Quality control, testing, and inspection services;
11. Maintenance, repair, and rebuilding of equipment;
12. Modification of equipment;
13. Technical representative services;
14. Operation of government-owned facilities;
15. Installation of equipment;
16. Salvage service;
17. Medical service;
18. Legal service;
19. Professional, administrative, and management services;
20. Utilities and housekeeping services;
21. Photographic, printing, and publication services;
22. Education and training services;
23. Transportation, travel, and relocation services;

Further subject matter examples of "services other than construction services" also include:

24. Services covered by the Service Contract Act as determined by the U.S. Department of Labor (see 29 CFR 4.130);
25. Advisory and assistance services as defined in OMB Circular A–120; and
26. Federal information processing services and federal information processing support services as defined in the notice of proposed rulemaking that would amend Part 201–2 of the Federal Information Resources Management Regulation (see 53 FR 32085, August 23, 1988).

"Services other than construction services" do not include services provided incidental to the supply of a product, provided that the value of the incidental services does not exceed the value of the product being delivered.

8. *Question*—What constitute "foreign" services other than construction services for purposes of implementing the Act as amended by section 7002 of Pub. L. 100–418?

Answer—"Foreign" services other than construction services are those services describerd in the answer to Question 7 above that are provided by an individual acting as a contractor or subcontractor who is a citizen or national of a country subject to sanctions, or an organization acting as a contractor or subcontractor where—

(A) 50 percent or more of the voting stock is owned by one or more citizens or nationals of a country subject to sanctions;

(B) The title to 50 percent or more of the stock is held subject to trust or fiduciary obligations in favor of one or more citizens or nationals of a country subject of sanctions;

(C) 50 percent or more of the voting stock is vested in or exercisable on behalf of one or more citizens or nationals of a country subject to sanctions;

(D) In the case of a corporation—

(i) The number of its directors necessary to constitute a quorum are citizens or nationals of a country subject to sanctions; or

(ii) The corporation is organized under the laws of a country or any subdivision, territory, or possession thereof that is subject to sanctions; or

(E) In the case of an individual or organization who is a participant in a joint venture or a member of a partnership, any participant of the joint venture or partner meets any of the criteria in subparagraphs (A) through (D) of this paragraph.

9. *Question*—Are Federal agencies prohibited from procuring services from all foreign countries?

Answer—No, Federal agencies are only prohibited from procuring services and products from individuals or organizations of "foreign" countries that have been specifically identified by the U.S. Trade Representative in the annual report on foreign discrimination and determined by the President to be subject to sanctions (See answer to Question 1). The President may decide to modify or restrict the application of

the prohibitions pursuant to section 7003(g)(2) of Pub. L. 100–418.

10. *Question*—How long are the provisions of Title VII of Pub. L. 100–418 in effect?

Answer—The provisions of Title VII of Pub. L. 100–418 are in effect until April 30, 1996.

Allan V. Burman,

Deputy Administrator and Acting Administrator.

[FR Doc. 89–4998 Filed 3–2–89; 8:45 am]

BILLING CODE 3110–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public meeting.

SUMMARY: The Physician Payment Review Commission will hold a public meeting on Thursday, March 9, 1989, from 9:00 a.m. to 5:30 p.m. and on Friday, March 10, 1989, beginning at 8:30 a.m. The meeting will be held at the Dupont Plaza Hotel, 1500 New Hampshire Avenue NW. (at Dupont Circle), in the Embassy Hall (A). The agenda for the meeting will be devoted to developing the recommendations to be included in the Commission's upcoming report to Congress.

ADDRESS: The Commission office is located in Suite 510, 2120 L Street NW., Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 89–4989 Filed 3–2–89; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26573; File No. SR–CBOE–87–22 Amendment No. 2]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Eligibility Requirements for Participation on RAES in OEX

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on Feb. 2, 1989, the Chicago Board Options Exchange, Inc. filed with the Securities and Exchange Commission Amendment No. 2 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following describes eligibility criteria for individuals and groups to participate as contra-brokers on RAES in options on the Standard & Poor's 100 Index ("OEX") for a six month pilot program:

RAES Eligibility [for Individuals and Groups]—OEX

A. Individuals

1. Any Exchange member who is registered as a market maker, who has signed the RAES Participation Agreement applicable to individuals, and who has completed the RAES instructional program is eligible to sign onto RAES, so long as the member meets the OEX/SPX market-maker requirements set forth in A(6) below.

2. The market maker must log onto the system using his own acronym and individual password. All RAES trades to which the market maker is a party will be assigned to and will clear into his market maker account.

3. Once a market maker logs onto RAES, he becomes obligated to sign-on to RAES on the next Friday prior to expiration, to the extent that he is in the OEX pit on that day. If he wishes, a market-maker may avail himself of the automatic sign-on feature that will be in place for groups. *See* B(4) and C(4) below.

4. A member's failure to meet his RAES obligations will disqualify him from signing onto RAES for such time period as the Index Floor Procedure Committee ("IFPC") determines. Prospectively, a member may apply to the IFPC to be relieved of RAES obligations. In deciding such applications, IFPC may condition the granting of relief from obligations with imposition of time periods during which the applicant is not eligible to participate in RAES.

5. An individual member who is logged onto RAES may log off the system whenever he leaves the trading crowd.

6. RAES participation in OEX is limited to OEX/SPX market makers To qualify, a market maker must: (a) Be approved under Exchange rules as a market maker with a letter of guarantee, (b) maintain his [principle] principal business on the CBOE as a market maker, (c) execute fifty percent of his market maker contracts for the preceding quarter in OEX or SPX, and (d) execute twenty-five percent of his market maker trades for the preceding quarter in OEX or SPX in person. SPX includes NSX. In making these calculations, RAES trades will not be considered. *Members currently using OEX RAES will be given a period of at least two months but no more than three months from the effective date of the rule to meet the standards as described above. It is probable that the final implementation date will be the Monday following expiration.*

B. Joint Accounts

1. Exchange-approved joint accounts [1] may use RAES once all the members of the joint account have executed the RAES Participation Agreement applicable to joint accounts and have satisfactorily completed the RAES instructional program. Thereafter, the members of the joint account may use RAES only as members of such account, and not as individuals or nominees of a member organization. No member or member organization may participate directly or indirectly in more than one joint account. Members of the joint account will be jointly and severally liable for each of the joint account's trades. Members of joint accounts must all have letters of guarantee from the clearing firm in which the trades will clear. Members of joint accounts must each meet the OEX/SPX market-marker obligations set forth in A(6), above

2. Any member of the joint account may log the other members of the joint account onto RAES, using their individual acronyms and passwords The system already will have been programmed to recognize that all such members are trading "for the account of" [2] the joint account. The trades of each joint account member will be assigned to and will clear into the joint account.

3. Whenever any member of the joint account is logged onto RAES, all account members must be. Once the joint account has been logged onto RAES by one of the account's members, all members of the joint account will

[1] To establish a joint account, members must submit an application to the Membership Department and furnish any additional information requested by the Surveillance and/or Financial Compliance Departments. *See generally* Exchange Rule 8.9(c) and the Interpretation and Policies thereunder

[2] The joint account will incur the usual trade match and processing fees for each RAES trade executed "for the account of" the joint account

automatically remain on the system until the next monthly expiration.

4. Unlike members trading on RAES for their own individual accounts, members of a joint account will not be able to log off RAES at will during a trading day. The system itself will log the joint account off after the close of trading on the last business day before the next expiration.

5. To obtain relief from the obligations set forth in paragraphs 3 and 4 above, and/or to reduce the number of participants in the joint account, a representative of the joint account must make application to the IFPC. The IFPC may, in its sole discretion, condition the granting of relief from the obligations with imposition of time periods during which applicants (including all members of the joint account) for relief will be precluded from participating in the RAES system.

6. The IFPC may bar, restrict or condition a joint account's participation in RAES if any member thereof fails to meet the OEX/SPX market-maker requirements.

7. The IFPC will determine the sign off fee which shall be at least $500.00 per member, to be paid whenever a member of the joint account has failed to adhere to the provisions of paragraphs 3 or 4 above by signing off RAES.

C. Member Organizations with Multiple Nominees

1. A member organization with multiple market maker/nominees on the floor may arrange to have the RAES trades of all its nominees assigned to a single market maker account, provided that an officer of the firm and the firm's participating nominees have first executed the RAES Participation Agreement applicable to firms and have satisfactorily completed the RAES instructional program. Thereafter, each of the participating nominees will be able to trade through RAES only in the manner described below, and not as a member of a joint account or as an individual. Each eligible nominee must meet the OEX/SPX market-maker requirements. Members of a multiple nominee RAES account may only participate in that one account and may not participate directly or indirectly in any other RAES account, nor may a member organization participate directly or indirectly in more than one account in RAES in OEX.

2. Any of the organization's nominees may log all such nominees onto the RAES system, using their acronyms and passwords. As with joint accounts, the system will have been programmed to treat such nominees' RAES trades as trades "for the account of" the designated nominee.[3] Any of the nominees may log onto RAES on behalf of the other nominees. All RAES trades will clear into the account of the designated nominee.

3. Whenever any of the participating nominees is logged onto the system, all must be.

4. Like a joint account, once a group consisting of nominees of a member organization logs onto the system, it will automatically be logged onto the system until the next monthly expiration. The system will log the account off after the close of trading on the last business day before the next expiration.

5. To obtain relief from the obligations set forth in 2, 3 and 4 above, and/or to reduce the number of its participating nominees, a member organization must make application to the IFPC. The IFPC may, in its sole discretion, condition the granting of relief from the obligations with imposition of time periods during which applicants (including all nominees of the member organization) for relief will be precluded from participating in the RAES system.

6. The IFPC may bar, restrict or condition a member organization's participation in RAES if any nominee thereof on RAES in OEX fails to meet the OEX/SPX market-maker requirements.

7. The IFPC will determine the sign off fee which shall be at least $500.00 per member, to be paid whenever a nominee has failed to adhere to the provisions of paragraphs 3 or 4 above by signing off RAES.

D. Authority to Disapprove

1. No person or entity may participate directly or indirectly in RAES, or share in the profits, directly or indirectly, with more than one RAES group, which may not exceed the maximum number of RAES participants set by the IFPC from time to time. In no event may IFPC set a maximum number higher than 50 RAES participants or 25% of the average number of RAES participants for the prior quarter, whichever is smaller. The IFPC will give groups one month notice if a reduction in group size becomes necessary due to application of this size limit. The IFPC reserves the authority to establish lower limits on the size of groups eligible to use RAES. Such limits may be imposed by the Committee at any time.

2. The IFPC also retains the right to disallow any group from participating in RAES where it appears to the Committee that such group:

a. Has "purchased" RAES rights from members of the group;

b. Does not afford each group participant a reasonable participation in profits and losses (as a guideline: no RAES participant may receive a flat fee, and a minimum participation level of any group member is ¼ of equal distribution to all group members, with responsibility for losses equivalent to share of profits); [4]

c. Is managed by a person who is not a member of the group; or

d. Is managed by a person who has a financial interest in another group.

E. Authority to Require RAES Participation

1. Notwithstanding the limitatins in paragraph A–6 (c) and (d), if there is inadequate RAES participation in OEX, the Exchange's IFPC may require market-makers who are members of the trading crowd, as defined in Rule 8.50 to log on to RAES absent reasonable justification or excuse for non-participation. If there continues to be inadequate RAES participation, the IFPC may request participation of all market-makers whether or not they are members of the OEX crowd.

2. Members who fail to abide by the foregoing eligibility provision and requirements may be subjet to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remedial action by the IFPC, including, but not limited, to suspending a member's eligibility for participation on RAES and such other remedies as may be appropriate and allowed under Chapter VIII of the Exchange Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

[3] The designated nominee will incur the usual trade match and processing fees for all RAES trades executed "for the account of" such nominee.

[4] For example, if there are ten group participants, a minimum participation level would be a 2.5% share in profits and losses.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The additions to the prior amendment reflect two additional powers given to the Exchanges' Index Floor Procedure Committee ("IFPC"). The first allows the IFPC to determine the sign off fee to be paid by members who fail to adhere to the RAES participation requirements by improperly signing off the system. The IFPC also has the power, whenever it deems participation to be inadequate, to require all members of the trading crowd to participate on RAES and, if necessary, to request that members from other trading crowds participate by signing on RAES. As such, the Exchange believes the system will be available to the public during all market conditions.

The other addition to the prior amendment provides for an implementation period of between 60 and 90 days for members currently on RAES to satisfy and become qualified to participate on RAES as detailed in paragraph A–6. The Exchange believes by enacting this gradual phase in period, no unnecessary burdens will be imposed on members or the public by drastically decreasing the number of member participants using RAES. In fact, recent statistics show that if the eligibility standards were enacted using trading data from the last quarter of 1988, only 192 out of the 449 RAES participants would be affected, thus leaving 257 members on RAES. Regarding customer usage of OEX RAES, current statistics reveal that 7% of the OEX customer volume and 25% of the OEX customer orders are transacted via RAES.

The Exchange believes that this amendment to the proposed rule change is consistent with the provisions of the Exchange Act and the rules and regulations thereunder, in particular, section 6(b)(5) thereof, in that the proposed rule change is designed to promote just and equitable principles of trade and are not designed to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons forso finding or (ii) as to which the self-regulatory organization consents, the commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inpsection and copying the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by insert date March 24, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 24, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–4978 Filed 3–2–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration, Region II Advisory Council, located in the geographical area of Syracuse, will hold a public meeting at 9:00 a.m. on Wednesday, March 29, 1989, at Giovanni's Ristorante, 2062 Erie Boulevard East, Syracuse, New York 13224, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call J. Wilson Harrison, District Director, U.S. Small Business Administration, 100 South Clinton Street, Room 1071, Syracuse, New York, 315/423–5371.

Jeannette M. Pauli,

Acting Director, Office of Advisory Councils.

February 27, 1989.

[FR Doc. 89–4919 Filed 3–2–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[CM–8/1268]

Legal Panel on International Telecommunications Law of the U.S. Organization for the International Telegraph And Telephone Consultative Committee and International Radio Consultative Committee; Meeting

The Department of State announces the fifth meeting of the Panel on International Telecommunications Law, which is under the auspices and authority of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and International Radio Consultative Committee (CCIR). The Panel's meeting will convene on Wednesday, March 17, 1989 in Room 1205, Department of State, 2201 C. Street NW., Washington, DC.

The meeting is scheduled for 1:30 to 4 p.m. and the draft agenda is as follows:

1. Report of Panel Activities
2. Briefings on ITU Plenipotentiary Conference Issues
3. Consideration of Future Panel Activities

Members of the general public may attend the meeting and join in the discussion. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of the Deputy U.S. Coordinator for International Communications and Information Policy, Mr. Parker Borg, State Department, Washington, DC; telephone (202) 647–5889. All attendees must use the C entrance to the building.

February 15, 1989.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

[FR Doc. 89-4818 Filed 3-2-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Kitty Hawk Air Cargo, Inc., For a Section 418 Domestic All-Cargo Air Service Certificate

AGENCY: Department of Transportation.

ACTION: Notice of application for a Section 418 Domestic All-Cargo Air Service Certificate, Docket 46039.

SUMMARY: The Department of Transportation is notifying all interested parties that Kitty Hawk Air Cargo, Inc., of Greeneville Municipal Airport, Route 1, Box 419B, Whitehouse Rd., Greeneville, TN 37743, has applied in Docket 46039 for an All-Cargo Air Service Certificate authorizing it engage in interstate and overseas air transportation of property and mail pursuant to section 418 of the Federal Aviation Act.

DATES: Persons wishing to file objections should do so no later than March 24, 1989.

ADDRESSES: Objections and answers to objections should be filed in Docket 46039 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the applicant.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2340.

Dated: February 27, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-4987 Filed 3-2-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Supplement to Department Circular—Public Debt Series—No. 6-89]

Treasury Notes, Series W-1991

Washington, February 23, 1989.

The Secretary announced on February 22, 1989, that the interest rate on the notes designated Series W-1991, described in Department Circular—Public Debt Series—No. 6-89 dated February 16, 1989, will be 9⅜ percent. Interest on the notes will be payable at the rate of 9⅜ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-5001 Filed 3-2-89; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 7-89]

Treasury Notes, Series J-1994

Washington, February 24, 1989.

The Secretary announced on February 23, 1989, that the interest rate on the notes designated Series J-1994, described in Department Circular—Public Debt Series—No. 7-89 dated February 16, 1989, will be 9½ percent. Interest on the notes will be payable at the rate of 9½ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 89-5002 Filed 3-2-89; 8:45 am]

BILLING CODE 4810-40-M

Internal Revene Service

[Delegation Order No. 97]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: Delegation Order 97 is revised to delegate to the Assistant Commissioner (International) the authority to act as the Competent Authority under the tax conventions of the United States. The text of the delegation order appears below.

EFFECTIVE DATE: March 2, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Rio, Office of Tax Treaty and Technical Services, IN:T:3, P.O. Box 44374, Washington, DC 20026-4374, telephone 202-287-4752 (not a toll-free call).

Order No. 97(Rev. 28)

Effective date: March 2, 1989.

Closing Agreements Concerning Internal Revenue Tax Liability

[Amended and Supplemented by Delegation Order No. 225]

Pursuant to authority granted to the Commissioner of Internal Revenue by 26 CFR 301.7121-1(a); Treasury Order No. 150-07; Treasury Order No. 150-09; and Treasury Order No. 150-17, subject to the transfer of authority covered in Treasury Order No. 120-01, as modified by Treasury Order No 150-27, as revised, this authority is hereinafter delegated.

1. The Chief Counsel is hereby authorized in cases under his/her jurisdiction to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whome he/she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed.

2. The Associates Chief Counsel, and the Assistant Commissioners (Examination) and (International) are hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. The Assistant Commissioner (International) is also authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or state for whom he/she acts) with respect to the performance of his/her functions as the competent authority under the tax conventions of the United States.

3. The Assistant Commissioner (Employee Plans and Exempt Organizations) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, that is, in respect of any transaction concerning employee plans or exempt organizations.

4. The Assistant Commissioner (International); Regional Commissioners; Regional Counsel; Assistant Regional Commissioners (Examination); Service Center Directors; District Directors; Chiefs and Associate Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction (but excluding cases docketed before the United States Tax Court) to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods.

5. The Associates Chief Counsel; the Assistant Commissioners (Employee Plans and Exempt Organizations) and (International); Regional Commissioners; Regional Counsel; Chiefs and Associates Chiefs of Appeals Offices; and Appeals Team Chiefs with respect to his/her team cases, are hereby authorized in cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) but only in respect to related specific items affecting other taxable periods.

6. The Assistant Commissioner (International) is hereby authorized to enter into and approve a written agreement with any person relating to the Internal Revenue tax liability of such person (or of the person or estate for whom he/she acts) in cases under his/her jurisdiction, and to provide for the mitigation of economic double taxation udner section 3 of Revenue Procedure 64–54, C.B. 1964–2, 1008, under Revenue Procedure 72–22, C.B. 1972–1, 747, and under Revenue Procedure 69–13, C.B. 1969–1, 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65–17, C.B. 1965–1, 833.

7. The authority delegated herein does not include the authority to set aside any closing agreement.

8. Authority delegated in this Order may not be redelegated, except that the Chief Counsel may redelegate the authority contained in paragraph 1 to the Associates Chief Counsel, the Deputy Associate Chief Counsel (International), and to the technical advisors on the staff of the Associate Chief Counsel (Technical and International) for cases that do not involve precedent issues; the Assistant Commissioners (Examination) and (International) may redelegate the authority contained in paragraph 2 of this order to the Deputy Assistant Commissioners (Examination) and (International); the Deputies Chief Counsel may redelegate the authority in paragraph 2 of this Order but not lower than the Deputies Associate Chief Counsel; and the Assistant Commissioner (Employee Plans and Exempt Organizations) may redelegate the authority contained in paragraph 3 of this Order to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) and to the Technical Advisors on the Staff of the Assistant Commissioner (Employee Plans and Exempt Organizations) for cases that do not involve precedent issues; Service Center Directors and Director, Austin Compliance Center may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Examination Support Unit with respect to agreements concerning the administrative disposition of certain tax shelter cases; and not below the Chief, Windfall Profit Tax Staff, Austin Service Center or Austin Compliance Center with respect to entering into and approving a written agreement with the Tax Matters Partner/Person (TMP) and one or more partners or shareholders with respect to whether the partnership or S corporation, acting through its TMP, is duly authorized to act on behalf of the partners or shareholders in the determination of partnership or S corporation items for purposes of the tax imposed by Chapter 45, and for purposes of assessment and collection of the windfall profit tax for such partnership or S corporation taxable year. The Assistant Commissioner (International) and District Directors may redelegate the authority contained in paragraph 4 of this Order but not below the Chief, Quality Review Staff/Section with respect to all matters, and not below the Chief, Examination Support Staff/Section, or Chief, Planning and Special Programs Branch/Section, with respect to agreements concerning the administrative disposition of certain tax shelter cases, or Chief, Special Procedures function, with respect to the waiver of right to claim refunds for those responsible officers who pay the corporate liability in lieu of a 100-percent penalty assessment under IRC 6672. To the extent that the authority previously exercised consistent with this Order may require ratification, it is hereby affirmed and ratified.

9. Delegation Order No. 97 (Rev. 27), effective October 31, 1987, is hereby superseded.

Approved:

Charles H. Brennan,

Deputy Commissioner (Operations).

Date: February 14, 1989.

[FR Doc. 89–4995 Filed 3–2–89; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 41
Friday, March 3, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 21, 1989.

PLACE: 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 89-5095 Filed 3-1-89 12:35 pm]

BILLING CODE 6351-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 27, 1989

TIME AND DATE: 10:00 a.m., Wednesday, March 1, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Florence Mining Company, Inc.,* Docket No. PENN 86-287-R. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR 75.1704, a mandatory safety standard dealing with escapeways and escape facilities.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)]

MATTERS TO BE CONSIDERED: The Commission will consider the following:

1. *Florence Mining Company, Inc.,* Docket No. PENN 86-297-R. (See above)
2. *Westwood Energy properties,* Docket Nos. PENN 88-42-R, etc. (Issues include consideration of the operator's Petition for Discretionary Review.)

It was determined by a unanimous vote of Commissioners that these issues be considered in closed session and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, March 8, 1989.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during February 1989.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: February 28, 1989.

William A. Gill,
Assistant Executive Director, National Mediation Board.

[FR Doc. 89-5122 Filed 3-1-89; 3:46 pm]

BILLING CODE 7550-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME: March 17, 1989—
8:30 a.m. Closed Session
9:00 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS:

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED MARCH 17:

Closed Session (8:30 a.m. to 9:00 a.m.)

1. Minutes—February 1989 Meeting
2. NSB and NSF Staff Nominees
3. Alan T. Waterman Award
4. Grants and Contracts

Open Session (9:00 a.m. to 11:30 a.m.)

5. Chairman's Report
6. Minutes—February 1989 Meeting
7. Director's Report: (a) Annual Report on NSF Use of Peer Review; (b) Report on National Science & Technology Week
8. Presentation by Dr. Shirley McBay: "Recruitment and Retention of Minorities, Women, and Persons with Disabilities into Science and Engineering Fields"
9. Other Business

Thomas Ubois,
Executive Officer.

[FR Doc. 89-5135 Filed 3-1-89; 4:02 p.m.]

BILLING CODE 7555-01-M

federal register

Friday
March 3, 1989

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice of Proposed Amendments and Additions; Hearing and Request for Public Comment

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments and additions to sentencing guidelines, policy statements and commentary. Request for public comment. Notice of hearing.

SUMMARY: By vote of 6–0 on February 14, 1989, the Commission voted to promulgate and submit to the Congress as regular, permanent amendments the group of temporary amendments that took effect June 25, 1988. See 53 FR 15532–36 (April 29, 1988). The Commission is now considering a number of further amendments and additions to the sentencing guidelines, policy statements and commentary. These proposals, or a synopsis of issues to be addressed, are set forth below. The Commission may report these and other regular amendments to the Congress on or before May 1, 1989. Alternatively, or additionally, the Commission may elect to promulgate as temporary amendments certain of these proposals pertaining to changes in law enacted by the 100th Congress. Public comment is sought on all proposals, alternative proposals, and any other aspect of the sentencing guidelines, policy statements and commentary.

DATES: Public comment should be received by the Commission no later than April 14, 1989, in order for it to be considered by the Commission in the promulgation of the next set of regular amendments due to the Congress by May 1, 1989. The Commission plans to hold a public hearing on April 7, 1989 in the Ceremonial Courtroom of the United States Courthouse in Washington, DC, on these and any other proposed amendments.

ADDRESS: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attn: Public Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director, Telephone: (202) 662–8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994 (o), (p).

Ordinarily, the Administrative Procedure Act rulemaking requirements are inapplicable to judicial agencies; however, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Commission.

Consideration of Promulgation of Certain Amendments as Temporary

The Commission has limited authority under section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987) to adopt temporary guidelines or amendments when the Congress creates new offenses or amends existing criminal statutes. A number of the amendments proposed below are in response to enactments of the 100th Congress, such as the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, Nov. 18, 1988). If the Commission elects to exercise its section 21(a) temporary guideline promulgation authority, it could put into effect some or all amendments implementing recently enacted legislation prior to the expiration of the 180-day period of Congressional review that applies to all regular amendments promulgated under 28 U.S.C. 994(p). If it follows that course of action, the Commission could simultaneously submit the amendments to the Congress as regular amendments. The Commission specifically invites comment on which, if any, of the proposals below should be promulgated as temporary guidelines under the authority of section 21(a) of the 1987 Sentencing Reform Act.

Format of Proposed Amendments

Proposed amendments are presented sequentially by section of the Guidelines Manual to which they pertain. A cross reference note is provided for amendments that affect more than one section of the Guidelines. Each amendment is followed by a statement explaining the reason for the amendment. For some proposals, additional explanatory material is provided immediately following the statement of purpose.

The proposed amendments are presented in three formats. First, the majority of the amendments are proposed as specific changes in a guideline, policy statement or commentary. Secondly, for some amendments the Commission has published alternative means of addressing an issue. Commentators are encouraged to state their preference among listed alternatives or to suggest a new alternative. Thirdly, the Commission has highlighted certain issues (generally relating to recently enacted legislation) and invites suggestions for specific amendment language. To help focus comment, one or more proposals are presented as examples for some of these issues.

Amendments of Special Note

The Commission has not attempted to categorize proposed amendments as substantive changes in policy or merely technical or clarifying in nature. Certain amendments, however, are in the Commission's opinion of particular significance in terms of their potential policy impact and/or because of the Commission's desire for public comment on identified issues, alternative proposals, or illustrative solutions. These amendments of special note are: 50 (Robbery), 96 (Continuing Criminal Enterprise), 119 (Fraud and Deceit), 243 (Career Offender), 247 (Chapter Five, Part A—Sentencing Table), and 260 (Home Detention).

Availability of Supporting Data

With respect to proposed amendment 50, pertaining to the guideline for robbery, amendment 119, pertaining to the guideline for certain fraud offenses, and amendment 243, pertaining to the "career offender" guidelines, the Commission is preparing reports summarizing and analyzing pertinent sentencing data. Prior to the April 7, 1989, public hearing, the Commission expects to have these reports available in preliminary form at its offices for review by interested persons.

Scope of Public Comment

While the amendments below are specifically proposed for public comment and possible submission to the Congress by May 1, 1989, the Commission emphasizes that it welcomes comment on any aspect of the sentencing guidelines, policy statements, and commentary, whether or not the subject of a proposed amendment. Pursuant to 28 U.S.C. 994(o), the Commission is directed to periodically "review and revise (the Guidelines), in consideration of comments and data coming to its attention." The same statutory provision further directs specific institutional representatives and groups within the Federal criminal justice system to submit to the Commission at least annually a written report that may suggest "changes in the guidelines that appear to be warranted."

The Commission invites any of the institutional groups listed in section 994(o) who have not previously submitted a report to the Commission to make such a report in conjunction with this solicitation of public comment.

Authority: 28 U.S.C. 994 (a), (o), (p), (x); section 21(a) of the Sentencing Act of 1987 (Pub. L. 100-182).

William W. Wilkins, Jr.,
Chairman.

Chapter One, Part A, Section 4(b) Departures

1. *Proposed Amendment:* Chapter 1, Part A (4)(b) is amended in the first sentence by deleting "* * * that was" and inserting in lieu thereof "of a kind, or to a degree,".

Reason for Amendment: The purpose of this amendment is to conform the quotation to the statute, as amended by section 3 of the Sentencing Act of 1987.

2. *Proposed Amendment:* Chapter One, Part A, section 4(b) is amended in the second sentence of the last paragraph by deleting "Part H" and inserting in lieu thereof "Part K (Departures)", and in the third sentence of the last paragraph by deleting "Part H" and inserting in lieu thereof "Part K".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

3. *Proposed Amendment:* Chapter One, Part A, section 4(b) is amended in the first sentence of the fourth paragraph by deleting "three" and inserting in lieu thereof "two"; in the fourth paragraph by deleting: "The first kind, which will most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the "serious" or the "simple" category, the guideline commentary suggests that the court may interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a "departure" in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though other have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for "reasonableness" on appeal. The Commission believes, however, that a simple reference by the court to the "mid-category" nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure."; in the first sentence of the fifth paragraph by deleting "second" and inserting in lieu thereof "first"; and, in the first sentence of the sixth paragraph by deleting "third" and inserting in lieu thereof "second".

Reason for Amendment: This amendment eliminates references to departure by interpolation from Chapter One of the Guidelines Manual. Related amendments: 17 (§ 2A2.1); 19 (§ 2A2.2); 25 (§ 2A3.1); 29 (§ 2A4.1); 51 (§ 2B3.1); 54 (§ 2B3.2); and 108 (§ 2E2.1).

Additional Explanatory Statement: The Commission has reviewed the discussion of interpolation in Chapter One, which has been read as describing "interpolation" as a departure from an offense level rather from the guideline range established after the determination of an offense level. The Commission concluded that it is simpler to add intermediate offense level adjustments to the guidelines in the cases where interpolation is most likely to be considered (i.e., degree of bodily injury). This amendment is not intended to preclude interpolation in other cases; where appropriate, the court will be able to achieve the same result by use of the regular departure provisions.

§ 1B1.1 Application Instructions

4. *Proposed Amendment:* Section 1B1.1(a) is amended by deleting "guideline section in Chapter Two most applicable to the statute of conviction" and inserting in lieu thereof "applicable offense guideline section from Chapter Two", and by deleting: "If more than one guideline is referenced for the particular statute, select the guideline most appropriate for the conduct of which the defendant was convicted.".

Reason for Amendment: The purpose of this amendment is to clarify the guideline and conform the language to § 1B1.2.

5. *Proposed Amendment:* Section 1B1.1(e) is amended by deleting immediately following the period at the end of the first sentence: "The resulting offense level is the total offense level.".

Section 1B1.1(g) is amended by deleting "total", and by inserting "determined above" immediately following "category".

Reason for Amendment: The purpose of this amendment is to clarify the guideline. The last sentence of § 1B1.1(e) and the use of "total offense level" in § 1B1.1(g) combine to produce a technically inaccurate instruction. It is not the total offense level of subsection (e), but rather that level as adjusted by any offense level adjustments from Chapter Four, Part B (see subsection (f)) that is used in subsection (g).

6. *Proposed Amendment:* The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(c) by deleting "firearm or other dangerous weapon" and inserting in lieu thereof "dangerous weapon (including a firearm)".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(g) is amended by deleting "firearm or other dangerous weapon" wherever it appears and inserting in lieu thereof "dangerous weapon (including a firearm)".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary. Related amendment: 16 (§ 2A2.1).

7. *Proposed Amendment:* The Commentary to § 1B1.1 captioned "Application Notes" is amended by inserting as an additional note the following:

"5. In the case of a defendant subject to a sentence enhancement under 18 U.S.C. 3147 (Penalty for an Offense Committed While on Release), see § 2J1.7 (Commission of Offense While on Release).".

Reason for Amendment: To clarify the treatment of a specific enhancement provision.

§ 1B1.2 Applicable Guidelines

8. *Proposed Amendment:* Section 1B1.2(a) is amended in the first sentence by deleting "The court shall apply" and inserting in lieu thereof "Determine"; and in the second sentence by deleting "the court shall apply" and inserting in lieu thereof "determine", and by deleting "guideline in such chapter" and inserting in lieu thereof "offense guideline section in Chapter Two".

Reason for Amendment: The purposes of this amendment are to clarify the guideline and to make the phraseology of this subsection more consistent with that of §§ 1B1.1 and 1B1.2(b).

9. *Proposed Amendment:* Section 1B1.2(a) is amended in the first sentence by inserting immediately before the period "(i.e., the offense conduct charged in the count of the indictment or information of which the defendant was convicted)".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 1 by deleting the second and third sentences of the first paragraph and inserting in lieu thereof the following:

"As a general rule, the court is to use the guideline section from Chapter Two most applicable to the offense of conviction. The Statutory Index (Appendix A) provides a listing to assist in this determination. When a particular statute proscribes only a single

type of criminal conduct, the offense of conviction and the conduct proscribed by the statute will coincide, and there will be only one offense guideline referenced. When a particular statute proscribes a variety of conduct that might constitute the subject of different offense guidelines, the court will determine which guideline section applies based upon the nature of the offense conduct charged in the count of which the defendant was convicted.".

Reason for Amendment: The purpose of this amendment is to clarify the guideline and Commentary.

10. *Proposed Amendment:* Section 1B1.2(a) is amended by deleting:

"Similarly, stipulations to additional offenses are treated as if the defendant had been convicted of separate counts charging those offenses.",

and by inserting the following additional subsections:

"(c) A conviction by a plea of guilty or nolo contendere containing a stipulation that specifically establishes the commission of additional offense(s) shall be treated as if the defendant had been convicted of additional count(s) charging those offense(s).

"(d) A conviction on a count charging a conspiracy to commit more than one offense shall be treated as if the defendant had been convicted on a separate count of conspiracy for each offense that the defendant conspired to commit.".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in the second paragraph of Note 1 by deleting:

"Similarly, if the defendant pleads guilty to one robbery but admits the elements of two additional robberies as part of a plea agreement, the guideline applicable to three robberies is to be applied.",

and by inserting as additional Notes the following:

"4. Subsections (c) and (d) address circumstances in which the provisions of Chapter Three, Part D (Multiple Counts) are to be applied although there may be only one count of conviction. Subsection (c) provides that in the case of a stipulation to the commission of additional offense(s), the guidelines are to be applied as if the defendant had been convicted of an additional count for each of the offenses stipulated. For example, if the defendant is convicted of one count of robbery but, as part of a plea agreement, admits to having committed two additional robberies, the guidelines are to be applied as if the defendant had been convicted of three counts of robbery. Subsection (d) provides that a conviction on a conspiracy count charging conspiracy to commit more than one offense is treated as if the defendant had been convicted of a separate conspiracy count for each offense that he conspired to commit. For example, where a conviction on a single count of conspiracy establishes that the defendant conspired to commit three robberies, the guidelines are to be applied as if the defendant had been convicted on one count of conspiracy to commit the first robbery, one count of conspiracy to commit the second robbery, and one count of conspiracy to commit the third robbery.

5. Particular care must be taken in applying subsection (d) because there are cases in which the jury's verdict does not establish which offense[s] was the object of the conspiracy. In such cases, subsection (d) should only be applied with respect to an object offense alleged in the conspiracy count if the court, were it sitting as a trier of fact, would convict the defendant of conspiring to commit that object offense. For example, if the defendant is convicted of a conspiracy count alleging that he conspired to commit two bank robberies, but there is insufficient evidence to support a separate conviction for conspiracy to commit one of the robberies, the court shall apply the guidelines as though the defendant had been convicted of a single count of conspiracy to commit one bank robbery. Note, however, if the object offenses specified in the conspiracy count would be grouped together under § 3D1.2(d) (e.g., a conspiracy to steal three government checks) it is not necessary to engage in the foregoing analysis, because § 1B1.3(a)(2) governs consideration of the defendant's conduct.".

Reason for Amendment: This amendment creates a new subsection (subsection (d)) to specify that a conviction of conspiracy to commit more than one offense is treated as if the defendant had been convicted of a separate conspiracy count for each offense that the defendant conspired to commit. The current instruction found only at Application Note 9 of § 3D1.2 is inadequate. For consistency, material now contained at § 1B1.2 (a) concerning stipulations to having committed additional offenses is moved to a new subsection (subsection (c)).

There are cases in which the jury's verdict does not specify how many or which offenses were the object of the conspiracy of which the defendant was convicted. Additional commentary (Application Note 5) is provided to address the treatment of such cases. Related amendment: 230 (§ 3D1.2).

Additional Explanatory Statement: In general, the offense level for conspiracy is determined by reference to the offense that was the object of the conspiracy. See § 2D1.4; § 2X1.1. A complication arises if a single conspiracy count alleges more than one object offense.

Currently, the only guidance for this situation is found at Application Note 9 of § 3D1.2. That commentary instructs the court to "treat the conspiracy count as if it were several counts, each charging conspiracy to commit one of the substantive offenses." This amendment upgrades that instruction from commentary to a guideline and places it in a more prominent position in the guidelines. For consistency, material now contained at § 1B1.2(a) concerning stipulations is moved to new subsection (c).

Additional commentary (Application Note 5) is provided to address cases in which the jury's verdict does not specify how many or which offenses were the object of the conspiracy of which the defendant was convicted. Compare *U.S.* v. *Johnson,* 713 F.2d 633, 645–46 (11th Cir. 1983) (conviction stands if there is sufficient proof with respect to any one of the objectives), with *U.S.* v. *Tarnopol,* 561 F.2d 466 (3d Cir. 1977) (failure of proof with respect to any one of the objectives renders the conspiracy conviction invalid).

In a circuit in which a multiple-objective conspiracy conviction does not constitute a finding that the defendant conspired to commit each objective, a guideline requiring courts to treat a multiple-objective conspiracy conviction as though the defendant had been convicted of separate conspiracies to commit each objective is unreasonable. In such cases, courts may choose to employ a special verdict procedure to ascertain the basis of the conviction. Alternatively, judicial fact-finding must be employed when the jury's verdict does not determine which objectives the defendant conspired to commit.

In order to maintain consistency with other § 1B1.2(a) determinations, it appears that this decision should be governed by a reasonable doubt standard. The determination that a defendant conspired to accomplish a particular criminal objective is unlike the mere enhancement of a sentence because of the presence of a sentencing factor. Rather, it is the equivalent of a jury's determination that the defendant engaged in a separate crime for which he may be punished. A higher standard of proof should govern the creation of what is, in effect, a new count of conviction.

Because the guidelines do not explicitly establish standards of proof, the proposed new application note calls upon the court to determine which offense[s] was the object of the conspiracy as if it were "sitting as a trier of fact."

§ 1B1.3 Relevant Conduct (Factors that Determine the Guideline Range)

11. *Proposed Amendment:* Section 1B1.3 is amended by deleting:

"The conduct that is relevant to determining the applicable guideline range includes that set forth below."

Section 1B1.3(b) is amended by deleting:

"(b) Chapter Four (Criminal History and Criminal Livelihood). To determine the criminal history category and the applicability of the career offender and criminal livelihood guidelines, the court shall consider all conduct relevant to a determination of the factors enumerated in the respective guidelines in Chapter Four.",

and inserting in lieu thereof the following:

"(b) Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentence). Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.".

The Commentary to § 1B1.3 captioned "Background" is amended in the second paragraph by deleting "Chapter Four" and inserting in lieu thereof "Chapters Four and Five", and by deleting "that Chapter" and inserting in lieu thereof "those Chapters".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

12. *Proposed Amendment:* The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 1 by deleting:

"If the conviction is for conspiracy, it includes conduct in furtherance of the conspiracy that was known to or was reasonably foreseeable by the defendant. If the conviction is for solicitation, misprision or accessory after the fact, it includes all conduct relevant to determining the offense level for the underlying offense that was known to or reasonably should have been known by the defendant.",

and inserting in lieu thereof:

"If the offense was undertaken in concert with others, whether or not charged as a conspiracy, it includes conduct of others in furtherance of the execution of the offense that was reasonably foreseeable by the defendant. For example, where Defendants A, B, and C engaged in a robbery, Defendant A is accountable under this guideline for an injury inflicted on a teller by Defendant B or C during the course of the robbery, even if Defendant A did not enter the bank, because such an injury is a reasonably forseeable result of the commission of a bank robbery. A conspiracy count, however, may be broadly worded and include the conduct of many participants over a substantial period of time. In such cases, the scope of the offense, for the purposes of this guideline, is not necessarily the same for every participant. For example, where Defendants A and B engaged in an ongoing marihuana importation conspiracy in which Defendant C was hired to off-load a single shipment, Defendants A, B, and C may be included in a single count charging conspiracy to import marihuana. For the purposes of determining the offense level under this guideline, Defendant C is accountable for the shipment of marihuana he conspired to import and any acts or omissions in furtherance of the importation that were reasonably forseeable. He is not accountable for prior or subsequent shipments of marihuana imported by Defendants A or B in which he played no part and from which he was to receive no benefit because those acts were not in furtherance of the execution of the offense that he undertook with Defendants A and B. In contrast, Defendants A and B are accountable for the marihuana imported during the entire conspiracy (which was reasonably forseeable to them) and any other acts or omissions in furtherance of the execution of that conspiracy that were reasonably forseeable.

"If the offense was a solicitation, misprision, or accessory after the fact, conduct 'for which the defendant would be otherwise accountable' includes all conduct relevant to determining the offense level for the underlying offense that was known to, or reasonably should have been known by, the defendant.".

Reason for Amendment: The purpose of this amendment is to clarify that the definition of relevant conduct excludes the conduct of other participants that was beyond the scope of (not in furtherance of) the jointly undertaken offense engaged in by the defendant. At the same time, the amendment clarifies that this definition covers conduct of others in furtherance of a jointly undertaken offense that was reasonably forseeable, where the conviction is for the underlying offense.

§ 1B1.5 Interpretation of References to Other Offense Guidelines

13. *Proposed Amendment:* § 1B1.5 is amended by deleting "adjustments for", and by inserting "and cross references" immediately before the period at the end of the sentence.

The Commentary to § 1B1.5 captioned "Application Note" is amended in Note 1 by inserting "and cross references" immediately before "as well as the base offense level". Reason for Amendment: The purpose of this amendment is to clarify the guideline and Commentary.

14. *Proposed Amendment:* The Commentary to § 1B1.5 captioned "Application Note" is amended in Note 1 by deleting: "If the victim was vulnerable, the adjustment from § 3A1.1 Vulnerable Victim) also would apply.".

Reason for Amendment: The purpose of this amendment is to delete an unnecessary sentence. No substantive change is made.

§ 1B1.9 Petty Offenses

15. *Proposed Amendment:* Section 1B1.9 is amended in the title by deleting "Petty Offenses" and inserting in lieu thereof "Class B or C Misdemeanors and Infractions".

Section 1B1.9 is amended by deleting "(petty offense)".

The Commentary to § 1B1.9 captioned "Application Notes is amended in the first sentence of Note 1 by deleting "petty offense" and inserting in lieu thereof: "Class B or C misdemeanor or an infraction", in the second sentence of Note 1 by deleting "A petty offense is any offense for which the maximum sentence that may be imposed does not exceed six months' imprisonment." and inserting in lieu thereof "A Class B misdemeanor is any offense for which the maximum authorized term of imprisonment is more than thirty days but not more than six months; a Class C misdemeanor is any offense for which the maximum term of imprisonment is more than five days but not more than thirty days; an infraction is any offense for which the maximum authorized term of imprisonment is not more than five days.", in the first sentence of Note 2 by deleting "petty offenses" and inserting in lieu thereof "Class B or C misdemeanors or infractions", in the second sentence of Note 2 by deleting "petty" and inserting in lieu thereof "such", in the third sentence of Note 2 by deleting "petty offense" and inserting in lieu thereof "Class B or C misdemeanor or infraction" and, in Note 3 by deleting:

"3. All other provisions of the guidelines should be disregarded to the extent that they purport to cover petty offenses.".

The Commentary to § 1B1.9 captioned "Background" is amended by deleting:

"voted to adopt a temporary amendment to exempt all petty offenses from the coverage of the guidelines. Consequently, to the extent that some published guidelines may appear to cover petty offenses, they should be disregarded even if they appear in the Statutory Index",

and inserting in lieu thereof:

"exempted all Class B and C misdemeanors and infractions from the coverage of the guidelines".

Reason for Amendment: Section 7089 of the Omnibus Anti-Drug Abuse Act of 1988 revises the definition of a petty offense so that it no longer exactly corresponds with a Class B or C misdemeanor or infraction. Under the revised definition, a Class B or C misdemeanor or infraction that has an authorized fine of more than $5,000 for an individual (or more than $10,000 for an organization) will not be a petty offense. This legislative revision does not affect the maximum terms of imprisonment authorized. The maximum authorized term of imprisonment remains controlled by the grade of the offense (i.e., the maximum term of

imprisonment remains five days for an infraction, thirty days for a Class C misdemeanor, and six months for a Class B misdemeanor). Because the statutory grade of the offense (i.e., a Class B or C misdemeanor or an infraction) is the more relevant definition for guideline purposes, this amendment deletes the references in § 1B1.9 to "petty offenses" and in lieu thereof inserts references to "Class B and C misdemeanors and infractions."

In addition, this amendment converts the Commission's emergency amendment at § 1B1.9 (effective June 15, 1988) into a permanent amendment. Related amendments: 21 (§ 2A2.3); 28 (§ 2A3.4); 45 (§ 2B2.3); 22 (§ 2G3.2); 135 (§ 2J1.1); 137 (§ 2J1.2); 161 (§ 2L1.3); 172 (§ 2P1.4); 173 (§ 2Q1.3); 278 (Appendix A).

§ 2A2.1 Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder

16. *Proposed Amendment:* Section 2A2.1 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

Reason for Amendment: The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in the language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C).

17. *Proposed Amendment:* Section 2A2.1(b)(3) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

The Commentary to § 2A2.1 captioned "Application Notes" is amended by deleting "Notes" from the caption and inserting in lieu thereof "Note" and by deleting the following:

"2. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate."

Reason for Amendment: The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, section 4(b)).

§ 2A2.2 Aggravated Assault

18. *Proposed Amendment:* Section 2A2.2 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

Reason for Amendment: The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C). Related amendment: 16 (§ 2A2.1).

19. *Proposed Amendment:* Section 2A2.2(b)(3) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

The Commentary to § 2A2.2 captioned "Application Notes" is amended by deleting:

"3. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.",

and by renumbering Note 4 as Note 3.

Reason for Amendment: The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, section 4(b)).

§ 2A2.3 Minor Assault

20. *Proposed Amendment:* Section 2A2.3(a)(1) is amended by deleting "striking, beating, or wounding" and inserting in lieu thereof "physical contact or if a dangerous weapon (including a firearm) was possessed and its use was threatened".

The Commentary to § 2A2.3 captioned "Application Notes" is amended by deleting:

"2. Striking, beating, or wounding" means conduct sufficient to violate 18 U.S.C. 113(d).",

and inserting in lieu thereof:

"2. Definitions of "firearm" and "dangerous weapon" are found in the Commentary to § 1B1.1 (Application Instructions)."

The Commentary to § 2A2.3 captioned "Background" is amended by deleting "The distinction for striking, beating, or wounding reflects the statutory distinction found in 18 U.S.C. 113 (d) and (e).".

Reason for Amendment: This amendment revises the criteria for application of subsection (a)(1). Related amendment: 23 (§ 2A2.4).

Additional Explanatory Statement: The amendment makes two changes in the Minor Assault guideline (§ 2A2.3) and Obstructing or Impeding Officers guideline (§ 2A2.4). First it eliminates the phrase "striking, wounding, or beating" (a statutory phrase dealing with a petty offense) in favor of "physical contact." This change clarifies the guidelines and eliminates any question concerning their applicability to a wide variety of assault statutes. Commentary language concerning the phrase "striking, wounding, or beating" is also deleted.

Second, the revision provides for a specific offense characteristic covering the case in which a weapon is possessed and its use is threatened. Note that where a weapon is used with intent to injure, § 2A2.2 (Aggravated Assault) rather than these guidelines apply.

21. *Proposed Amendment:* The Commentary to § 2A2.3 captioned "Statutory Provisions" is amended by deleting "113(d), 113(e),".

Reason for Amendment: The purpose of this amendment is to delete references to petty offenses. Related amendment: 15 (§ 1B1.9).

§ 2A2.4 Obstructing or Impeding Officers

22. *Proposed Amendment:* The Commentary to § 2A2.4 captioned "Application Notes" is amended in Note 1 by deleting: "Do not apply § 3A1.2 (Official Victim).", and by inserting as the last sentence: "Therefore, do not apply § 3A1.2 (Official Victim) unless subsection (c) requires the offense level to be determined under § 2A2.2 (Aggravated Assault).".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

23. *Proposed Amendment:* Section 2A2.4(b)(1) is amended by deleting "involved striking, beating, or wounding", and inserting in lieu thereof "involved physical contact or if a dangerous weapon (including a firearm) was possessed and its use was threatened".

The Commentary to § 2A2.4 is amended by deleting:

"2. Striking, beating, or wounding" is discussed in the Commentary to § 2A2.3 (Minor Assault).",

and inserting in lieu thereof:

"2. Definitions of "firearm" and "dangerous weapon," are found in the Commentary to § 1B1.1 (Application Instructions)."

Reason for Amendment: This amendment revises the criteria for application of subsection (b)(1). Related amendment: 20 (§ 2A2.3).

§ 2A3.1 Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse

24. *Proposed Amendment:* Section 2A3.1(b)(1) is amended by deleting:

"criminal sexual abuse was accomplished as defined in 18 U.S.C. 2241",

and inserting in lieu thereof:

"offense was committed by the means set forth in 18 U.S.C. 2241(a) or (b)".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 2 by deleting:

" 'Accomplished as defined in 18 U.S.C. 2241' means accomplished by force, threat, or other means as defined in 18 U.S.C. 2241 (a) or (b) (i.e., by using force against that person; by threatening or placing that other person",

and inserting in lieu thereof the following:

" 'The means set forth in 18 U.S.C. 2241 (a) or (b)' are: (by using force against the victim; by threatening or placing the victim",

and by inserting at the end of the note the following additional sentence:

"This provision would apply, for example, where any dangerous weapon was used, brandished, or displayed to intimidate the victim.".

The Commentary to § 2A3.1 captioned "Background" is amended in the second sentence by deleting the comma immediately following "force" and inserting in lieu thereof a semicolon, and by deleting "kidnaping," and inserting in lieu thereof "or kidnaping;", and in the last sentence of the last paragraph by deleting "serious physical" and inserting in lieu thereof "permanent, life-threatening, or serious bodily".

Reason for Amendment: The purpose of this amendment is to clarify the guideline and Commentary.

25. *Proposed Amendment:* Section 2A3.1(b)(4) is amended by inserting immediately before the period at the end of the sentence:

"; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

Reason for Amendment: The purpose of this amendment is to provide an intermediate adjustment level for degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, Section 4(b)).

§ 2A3.2 Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts

26. *Proposed Amendment:* The Commentary to § 2A3.2 captioned "Statutory Provision" and "Background" is amended by deleting "2243" wherever it appears and inserting in lieu thereof "2243(a)".

The Commentary to § 2A3.2 captioned "Background" is amended by deleting "statutory rape, i.e.,", and by deleting "victim's incapacity to give lawful consent" and inserting in lieu thereof "age of the victim".

Reason for Amendment: The purposes of this amendment are to clarify that the relevant issue is the age of the victim, and to provide a more specific reference to the underlying statute.

§ 2A3.3 Criminal Sexual Abuse of a Ward (Statutory Rape) or Attempt to Commit Such Acts

27. *Proposed Amendment:* Section 2A3.3 is amended in the title by deleting "(Statutory Rape)".

The Commentary to § 2A3.3 captioned "Statutory Provision" is amended by deleting "§ 2243" and inserting in lieu thereof "§ 2243(b)".

Reason for Amendment: The purposes of this amendment are to delete inapt language from the title, and to provide a more specific reference to the underlying statute.

§ 2A3.4 Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact

28. *Proposed Amendment:* Section 2A3.4 and the accompanying commentary is amended by deleting:

"§ 2A3.4. Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact

(a) Base Offense Level: 6

(b) Specific Offense Characteristics

(1) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2241 (including, but not limited to, the use or display of any dangerous weapon), increase by 9 levels.

(2) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 2244, 2245.

Application Notes:

"Accomplished as defined in 18 U.S.C. 2241" means accomplished by force, threat, or other means as defined in 18 U.S.C. 2241 (a) or (b) (i.e., by using force against that person; by threatening or placing that other person in fear that any person will be subject to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct).

2. "Accomplished as defined in 18 U.S.C. 2242" means accomplished by threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or when the victim is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

Background: This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under § 2A3.1–3.3). Enhancements are provided for the use of force or threats. The maximum term of imprisonment authorized by statute for offenses covered in this section is five years (if accomplished as defined in 18 U.S.C. 2241), three years (if accomplished as defined in 18 U.S.C. 2242), and six months otherwise. The base offense level applies to conduct that is consensual.", and inserting in lieu thereof:

"§ 2A3.4 Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact

(a) Base Offense Level:

(1) 14, if the offense was committed by the means set forth in 18 U.S.C. 2241 (a) or (b);

(2) 10, if the offense was committed by the means set forth in 18 U.S.C. 2242;

(3) 6, otherwise.

(b) Specific Offense Characteristics:

(1) If the victim had not attained the age of twelve years, increase by 4 levels; but if the resulting offense level is less than 14, increase to level 14.

(2) If the base offense level is determined under subsection (a) (1) or (2), and the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by 2 levels.

Commentary

Statutory Provision: 18 U.S.C. 2244(a) (1), (2), (3).

Application Notes:

1. 'The means set forth in 18 U.S.C. 2241 (a) or (b)' are: By using force against the victim; by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.

2. 'The means set forth in 18 U.S.C. 2242' are: By threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or by victimizing an individual who is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act.

Background: This section covers abusive sexual contact not amounting to criminal sexual abuse (criminal sexual abuse is covered under § 2A3.1–3.3). Alternative base

offense levels are provided to take account of the different means used to commit the offense. Enhancements are provided for victimizing children or minors. The enhancement under subsection (b)(2) does not apply, however, where the base offense level is determined under subsection (a)(3) because an element of the offense to which that offense level applies is that the victim had attained the age of twelve years but had not attained the age of sixteen years.".

Reason for Amendment: The purpose of this amendment is to provide enhanced punishment for the victimization of minors and children and to conform the structure of the guideline to that of § 2A3.1 (Criminal Sexual Abuse).

Additional Explanatory Statement: The offense levels set forth in the amended Abusive Sexual Contact guideline (§ 2A3.4) are derived from the original abusive sexual contact guideline and from analogous guidelines such as Criminal Sexual Abuse (§ 2A3.1), Criminal Sexual Abuse of a Minor (§ 2A3.2), and the Exploitation of a Minor guidelines in Part G (§§ 2G1.2, 2G2.1, 2G2.2).

As stated in the accompanying commentary, the base offense level of six in the original abusive sexual contact guideline "applied to conduct that is consensual." This refers to sexual conduct with a minor accomplished without resort to the means set forth in 18 U.S.C. 2241(a), 2241(b) and 2242. A nine level enhancement is provided for sexual contact committed by the means set forth in § 2241 (a) or (b) (generally force) and a four level enhancement is provided for sexual contact committed by the means set forth in § 2242 (generally fear). No enhancements are provided based upon the age of the victim.

The amended guideline retains the ascending order of offense levels based upon the means used to commit the crime, but adds enhancements based upon the age of the victim. There is a two level enhancement if the victim is a minor (12 to 15 years old) and a four level enhancement if the victim is a child (11 years old or younger). These enhancements parallel the enhancements for minor and children victims in § 2A3.1 (Criminal Sexual Abuse) and § 2G1.2 (Transportation of a Minor for the Purpose of Prostitution). In addition, § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material) and § 2G2.2 (Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor) provide a two level enhancement for child victims. In those two guidelines, the base offense level already encompasses victimization of a minor.

After incorporating ascending offense levels based upon the means used to commit the crime and enhancements based upon the age of the victim, the offense levels set forth in the amended Abusive Sexual Contact guideline have been adjusted to insure that the same offense level (14) will result in each of the following cases: Sexual contact with an adult committed by force, sexual contact with a child committed by fear and sexual contact with a child committed without force or fear. In the parallel sexual abuse guideline (§ 2A3.1), the Commission has already determined that these three cases are of equal severity and therefore has assigned the same offense level (31) to each.

Recent legislation increased the maximum penalty for a violation of 18 U.S.C. 2244 (a)(1) and (a)(3). [cite]. The Commission solicits public comment on whether the offense levels in § 2A3.4 should be increased because the authorized maximum sentences for certain conduct covered by this guideline have been raised.

§ 2A4.1 Kidnapping, Abduction, Unlawful Restraint

29. Proposed Amendment: Section 2A4.1(b)(2) is amended by inserting immediately before the period at the end of the sentence: "; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels".

Reason for Amendment: The purpose of this amendment is to provide intermediate adjustment level for degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, section 4(b)).

§ 2A5.2 Interference with Flight Crew Member or Flight Attendant

30. Proposed Amendment: The Commentary to § 2A5.2 captioned "Application Note" is amended by deleting:

"*Application Note:*
If an assault occurred, apply the most analogous guideline from Part A, Subpart 2 (Assault) if the offense level under that guideline is greater.".

Reason for Amendment: The purpose of this amendment is to simplify the guideline by deleting redundant material.

§ 2A5.3 Committing Certain Crimes Aboard Aircraft

31. Proposed Amendment: The Commentary to § 2A5.3 captioned "Application Notes" is amended in Note 1 by deleting "that the defendant is convicted of violating" and inserting in lieu thereof "of which the defendant is convicted".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

§ 2B1.1 Larceny, Embezzlement, and Other Forms of Theft

32. *Proposed Amendment:* Section 2B1.1(b)(1) is amended by deleting:

	"Loss	Increase in level
(A)	$100 or less	No increase.
(B)	$101 to $1,000	Add 1.
(C)	$1,001 to $2,000	Add 2.
(D)	$2,001 to $5,000	Add 3.
(E)	$5,001 to $10,000	Add 4.
(F)	$10,001 to $20,000	Add 5.
(G)	$20,001 to $50,000	Add 6.
(H)	$50,001 to $100,000	Add 7.
(I)	$100,001 to $200,000	Add 8.
(J)	$200,001 to $500,000	Add 9.
(K)	$500,001 to $1,000,000	Add 10.
(L)	$1,000,001 to $2,000,000	Add 11.
(M)	$2,000,001 to $5,000,000	Add 12.
(N)	Over $5,000,000	Add 13",

And inserting in lieu thereof:

	"Loss (apply the greatest)	Increase in level
(A)	$100 or less	No increase.
(B)	More than $100	Add 1.
(C)	More than $1,000	Add 2.
(D)	More than $2,000	Add 3.
(E)	More than $5,000	Add 4.
(F)	More than $10,000	Add 5.
(G)	More than $20,000	Add 6.
(H)	More than $40,000	Add 7.
(I)	More than $80,000	Add 8.
(J)	More than $150,000	Add 9.
(K)	More than $300,000	Add 10.
(L)	More than $500,000	Add 11.
(M)	More than $1,000,000	Add 12.
(N)	More than $2,000,000	Add 13.
(O)	More than $5,000,000	Add 14".

Reason for Amendment: The purpose of this amendment is to conform the theft and fraud loss table to the tax loss table in order to remove an unintended inconsistency between these tables in cases where the loss is greater than $40,000. Both tables increase the offense level when the loss exceeds $2,000, but the Tax Loss Table provides a maximum 12 level difference while the Fraud Loss Table has a maximum 11 level difference. Up to $40,000 the tables are identical. Above $40,000 there are minor differences (e.g., from $40,001–$50,000 the Tax Loss Table provides a 1 level higher offense level; from $50,001–$80,000 the offense levels are identical; from $80,001–$100,000 the Tax Loss Table again provides a 1 level higher offense level; from $100,001–$150,000 the

offense levels are again identical; from $150,001–$200,000 Tax Loss Table again provides a 1 level higher offense level). Because the tax loss table contains one additional level, this amendment will increase the offense level by one level in cases involving large losses.

Related amendment: 115 (§ 2F1.1). This amendment also eliminates minor gaps in the loss table. Related amendments: 39 (§ 2B2.1); 47 (§ 2B3.1); 180 (§ 2R1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

33. *Proposed Amendment:* Section 2B1.1(b)(1), as amended by proposed Amendment 32, is further amended by deleting:

"(I)	More than $80,000	Add 8.
(J)	More than $150,000	Add 9.
(K)	More than $300,000	Add 10.
(L)	More than $500,000	Add 11.
(M)	More than $1,000,000	Add 12.
(N)	More than $2,000,000	Add 13.
(O)	More than $5,000,000	Add 14".

And inserting in lieu thereof:

"(I)	More than $70,000	Add 8.
(J)	More than $120,000	Add 9.
(K)	More than $200,000	Add 10.
(L)	More than $350,000	Add 11.
(M)	More than $500,000	Add 12.
(N)	More than $800,000	Add 13.
(O)	More than $1,500,000	Add 14.
(P)	More than $2,500,000	Add 15.
(Q)	More than $5,000,000	Add 16".

Reason for Amendment: The purpose of this amendment is to increase the offense levels for offenses with larger loss values to better reflect the seriousness of the conduct. Related amendments: 116 (§ 2F1.1); 210 (§ 2T4.1); 39 (§ 2B2.1); 48 (§ 2B3.1).

34. *Proposed Amendment:* Section 2B1.1(b)(6) is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to steal vehicles or vehicle parts".

The commentary accompanying § 2B1.1 is amended by deleting:

"8. 'Organized criminal activity' refers to operations such as car theft rings or 'chop shops,' where the scope of the activity is clearly significant.",

And inserting in lieu thereof the following:

"8. Subsection (b)(6) referring to an 'organized scheme to steal vehicles or vehicle parts' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop'. 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft."

The commentary accompanying § 2B1.1 is further amended by deleting:

"A minimum offense level of 14 is provided for organized criminal activity, i.e., operations such as car theft rings or 'chop shops,' where the scope of the activity is clearly significant but difficult to estimate. The guideline is structured so that if reliable information enables the court to estimate a volume of property loss that would result in a higher offense level, the higher offense level would govern.",

and inserting in lieu thereof the following:

"A minimum offense level of 14 is provided for offenses involving an organized scheme to steal vehicles or vehicle parts. Typically, the scope of such activity is substantial (i.e., the value of the stolen property, combined with an enhancement for 'more than minimal planning' would itself result in an offense level of at least 14), but the value of the property is particularly difficult to ascertain in individual cases because the stolen property is rapidly resold or otherwise disposed of in the course of the offense. Therefore, the specific offense characteristic of 'organized scheme' is used as an alternative to 'loss' in setting the offense level.".

Reason for Amendment: The purpose of this amendment is to clarify the coverage of a specific offense characteristic. Related amendments: 38 (§ 2B1.2); 59 (§ 2B6.1).

35. *Proposed Amendment:* The Commentary to § 2B1.1 captioned "Background" is amended in the first paragraph by deleting "§ 5A1.1" and inserting in lieu thereof "Chapter Five, Part A".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 2B1.2 Receiving Stolen Property

36. *Proposed Amendment:* Section 2B1.2 is amended in the title by inserting ", Transporting, Transferring, Transmitting, or Possessing" immediately after "Receiving".

Section 2B1.2(b)(3)(A) is amended by inserting "receiving and" immediately before "selling".

The Commentary to § 2B1.2 captioned "Application Notes" is amended by deleting Note 1 as follows:

"1. If the defendant is convicted of transporting stolen property, either § 2B1.1 or this guideline would apply, depending upon whether the defendant stole the property.",

and by renumbering Notes 2 and 3 as Notes 1 and 2 respectively.

Reason for Amendment: The purpose of this amendment is to clarify the nature of the cases to which this guideline applies.

37. *Proposed Amendment:* Section 2B1.2 is amended by renumbering subsection (b)(4) as (b)(5), and by inserting a new subsection (b)(4) as follows:

"(4) If the property included undelivered United States mail and the offense level as determined above is less than level 6, increase to level 6.".

The Commentary to § 2B1.2 captioned "Application Notes" is amended by inserting the following additional application note:

"3. 'Undelivered United States mail' means mail that has not actually been received by the addressee or his agent (e.g., it includes mail that is in the addressee's mail box).".

Reason for Amendment: The purpose of this amendment is to add a specific offense characteristic where stolen property involved "undelivered mail" to conform to § 2B1.1.

Note.—The current Applicaton Note 3 to § 2B1.2 is renumbered as Note 2 by amendment 36.

38. *Proposed Amendment:* Section 2B1.2(b)(4) is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to receive stolen vehicles or vehicle parts".

The Commentary accompanying § 2B1.2 is amended by inserting the following new Application Note:

"4. Subsection (b)(4) referring to an 'organized scheme to receive stolen vehicles or vehicle parts' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop.' 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft. See Commentary to § 2B1.1 (Larceny, Embezzlement, and other Forms of Theft).".

Reason for Amendment: The purpose of this amendment is to clarify the coverage of a specific offense characteristic. Related amendments: 34 (§ 2B1.1); 59 (§ 2B6.1).

* * * * *

§ 2B2.1 Burglary of Residence

39. *Proposed Amendment:* Section 2B2.1(b)(2) is amended in the first column of the table by deleting:

	"Loss
(A)	$2,500 or less
(B)	$2,501–$10,000
(C)	$10,001–$50,000
(D)	$50,001–$250,000
(E)	$250,001–$1,000,000
(F)	$1,000,001–$5,000,000
(G)	more than $5,000,000",

And inserting in lieu thereof:

	"Loss (apply the greatest)
(A)	$2,500 or less
(B)	More than $2,500
(C)	More than $10,000

(D) More than $50,000
(E) More than $250,000
(F) More than $1,000,000
(G) More than $5,000,000".

Reason for Amendment: The purpose of this amendment is to eliminate minor gaps in the loss table. Related amendments: 32 (§ 2B1.1); 47 (§ 2B3.1); 115 (§ 2F1.1); 180 (§ 2R1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

* * * * *

40. *Proposed Amendment:* Section 2B2.1(b)(1), as amended by proposed amendment 39, is further amended by deleting:

"(F) ..... More than $1,000,000..... Add 5.
(G)..... More than $5,000,000..... Add 6",

and inserting in lieu thereof:

"(F) ..... More than $800,000..... Add 5.
(G)..... More than $1,500,000..... Add 6.
(H)..... More than $2,500,000..... Add 7.
(I) ..... More than $5,000,000..... Add 8".

Reason for Amendment: The purpose of this amendment is to conform this loss table to the proposed amendment to § 2B1.1 (Amendment 33).

41. *Proposed Amendment:* Section 2B2.1(b)(4) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 4 by deleting "with respect to a firearm or other dangerous weapon" and inserting in lieu thereof "to possession of any dangerous weapon (including a firearm) that was".

Reason for Amendment: The purpose of this amendment is to clarify the guideline and Commentary. Related amendment: 18 (§ 2A2.1).

§ 2B2.2 Burglary of Other Structures

42. *Proposed Amendment:* Section 2B2.2(b)(4) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

The Commentary to § 2B2.2 captioned "Application Notes" is amended in Note 4 by deleting "with respect to a firearm", and inserting in lieu thereof "to possession of any dangerous weapon (including a firearm) that was".

Reason for Amendment: The purposes of this amendment are to clarify the guideline and Commentary and to correct a clerical error. Related amendment: 18 (§ 2A2.1).

§ 2B2.3 Trespass

43. *Proposed Amendment:* Section 2B2.3(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

44. *Proposed Amendment:* Section 2B2.3(b)(2) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

Reason for Amendment: The purpose of this amendment is to clarify the guideline. Related amendment: 16 (§ 2A2.1).

45. *Proposed Amendment:* The Commentary to § 2B2.3 captioned "Statutory Provisions" is amended by deleting "Provisions" and inserting in lieu thereof "Provision", and by deleting "§ 1382,".

Reason for Amendment: The purpose of this amendment is to delete a reference to a petty offense. Related amendment: 15 (§ 1B1.9).

46. *Proposed Amendment:* The Commentary to § 2B2.3 captioned "Statutory Provisions" is further amended by deleting "18 U.S.C. 1854" and inserting in lieu thereof "42 U.S.C. 7202b".

Reason for Amendment: The purpose of this amendment is to delete an incorrect statutory reference and to add a correct one.

§ 2B3.1 Robbery

47. *Proposed Amendment:* Section 2B3.1(b)(1) is amended in the first column of the table by deleting:

"Loss
(A) $2,500 or less
(B) $2,501–$10,000
(C) $10,001–$50,000
(D) $50,001–$250,000
(E) $250,001–$1,000,000
(F) $1,000,001–$5,000,000
(G) more than $5,000,000",

And inserting in lieu thereof:

"Loss (Apply the Greatest)
(A) $2,500 or less
(B) More than $2,500
(C) More than $10,000
(D) More than $50,000
(E) More than $250,000
(F) More than $1,000,000
(G) More than $5,000,000".

Reason for Amendment: The purpose of this amendment is to eliminate minor gaps in the loss table. Related amendments: 32 (§ 2B1.1); 39 (§ 2B2.1); 115 (§ 2F1.1); 180 (§ 2R1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

48. *Proposed Amendment:* Section 2B3.1(b)(1), as amended by proposed Amendment 47, is further amended by deleting:

"(F) ..... More than $1,000,000..... Add 5.
(G)..... More than $5,000,000..... Add 6",

and inserting in lieu thereof:

"(F) ..... More than $800,000..... Add 5.
(G)..... More than $1,500,000..... Add 6.
(H)..... More than $2,500,000..... Add 7.
(I) ..... More than $5,000,000..... Add 8".

Reason for Amendment: The purpose of this amendment is to conform this loss table to the proposed amendments to § 2B1.1 (Amendment 33).

49. *Proposed Amendment:* Section 2B3.1 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

Reason for Amendment: The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C). Related amendment: 16 (§ 2A2.1).

50. *The Offense Level for Robbery:* The Commission has received comments from several sources, primarily Assistant United States Attorneys and certain District Judges, to the effect that the guideline for robbery, § 2B3.1, results in sentences that are too low, especially for first offenders.[1]

The guideline was drafted in the expectation that it would result in sentences that, on average, would approximate past sentencing practices for bank robbery,[2] in terms of average

[1] Although § 2B3.1 relates to robbery in general, the comments received so far have been confined to bank robbery. The vast majority of all federal robbery prosecutions are for bank robbery.

[2] Past practice showed that the average sentence for non-bank robbery was substantially less than that for bank robbery (up to 5 offense levels less, but the number of cases was quite small). The guidelines reduced that difference to 0 or 1 level by raising the offense level for non-bank robbery cases. Comment is solicited on whether there is a sufficient distinction between bank robberies and other robberies to warrant a greater difference in offense level.

time served.[3] It was recognized, however, that for certain offenders with very serious criminal records, the guideline sentences would greatly exceed those served under past practice, because of the manner in which the Commission implemented the directive contained in 28 U.S.C. 994(h). See § 4B1.1 (Career Offender). Revision of § 4B1.1, discussed below (Amendment 243) is a related issue as to which the Commission expressly solicits comment.

Data collected by the Commission suggest that, under the guidelines, the average sentences for bank robbery may in fact be lower than in past practice, at least for certain classes of offenders. However, because the guidelines have been in effect only since November 1, 1987 (for crimes committed on or after that date), and because a number of judges did not begin applying them until after the Supreme Court's decision in Mistretta, the Commission's data on practice under the guidelines are very preliminary, and do not yet provide a reliable basis for evaluating the workings of the current guideline. The Commission is continuing to collect and analyze pertinent data. The Commission will make reports summarizing and analyzing the data available at the Commission's offices to those who are interested.

Regardless of whether the current guideline accurately reflects past practice, it may be appropriate to raise (or lower) the guideline for other reasons. For example, sentences under the current guideline may not adequately reflect the seriousness of the offense. Or it might be appropriate to incarcerate the offender for a longer period of time in order to protect the public from offenses that he might otherwise commit.

The typical bank robbery encountered in the federal system, whether armed or unarmed, involves the theft of less than $10,000, and no injuries or unlawful restraint. For such offenses, the guideline sentences (in months) are as follows:

CRIMINAL HISTORY CATEGORY

	I	II	III	IV	V	VI	Career offender
Unarmed	30-37	33-41	37-46	46-57	57-71	63-78	210-262
Armed	41-51	46-57	51-63	63-78	77-96	84-105	262-327

Actual time served usually will be approximately 15% lower because of "good time" credits. Aggravating factors, such as discharge of a weapon, injury to or restraint of a victim, or the theft of a larger sum of money, result in longer sentences, except for career offenders. These sentences may be reduced by a guilty plea, in which event, except for career offenders, there usually is a decrease of 2 levels (approximately 20%). On the other hand, these sentences could be increased by 2 levels (approximately 25%) if § 3C1.1 (Obstruction of Justice) applies, or by 2 or more levels if the defendant is also convicted of other offenses (see Chapter 3, Part D). Lower or higher sentences also may result though departure from the guidelines.

As one possible response to the comments that the sentences under the current guideline are too low, it has been proposed that the base offense level in § 2B3.1 be increased by six levels (from level 18 to level 24). This would result in the following guideline sentences for the typical bank robbery:

CRIMINAL HISTORY CATEGORY

	I	II	III	IV	V	VI	Career offender
Unarmed	57-71	63-78	70-87	84-105	100-125	110-137	210-262
Armed	78-97	87-108	97-121	110-137	130-162	140-175	262-327

The Commission solicits comment on whether the sentences produced by the robbery guideline are appropriate, and if not, in what respects the guideline should be changed.[4] Comments need not be limited to the approach described above.

Concern also has been expressed that the guideline sentence may be unduly limited by the number of counts of conviction. (See Chapter 3, Part D, for guidelines dealing with multiple counts of conviction.) Under the guidelines, the offense level is not increased by offenses that are uncharged or counts that are dismissed; the sentencing judge may consider them only within the guideline range or as a basis for departure. Under past practice, the sentencing judge was unconstrained in his consideration of other offenses. The parole guidelines took them into account regardless of whether there was a conviction.

This facet of the guidelines may result in lower sentences than under past practice if the prosecutor accepts a plea to one count of robbery when the defendant in fact has committed several robberies. It has been proposed that the Commission amend the robbery guideline to explicitly take into account other robberies of which the defendant has been not convicted. The following two amendments have been proposed as ways to accomplish this.

[Option 1: Insert as an additional specific offense characteristic at § 2B3.1(b):

"(6) If, as part of the same course of conduct or common scheme or plan as the offense of conviction, the defendant committed one or more additional robberies, increase by 2 levels. Do not, however, apply this adjustment if the application defendant is convicted of multiple counts of robbery.".]

[Option 2: Insert as an additional specific offense characteristic at § 2B3.1(b):

[3] As a result of the Sentencing Reform Act, parole was abolished and "good time" credits were reduced to 54 days per year (15%). Thus, to produce the same time served, a sentence under the guidelines necessarily would be much shorter than the sentence pronounced under the old law.

[4] A change in the sentences could be effected through changes in other guidelines, such as criminal livelihood or career offender. Comment may be addressed to these or other issues.

"(6) If, as part of the same course of conduct or common scheme or plan as the offense of conviction, the defendant committed (A) one additional robbery, increase by 2 levels; (B) two additional robberies, increase by 3 levels; (C) three or four additional robberies, increase by 4 levels; or (D) five or more additional robberies, increase by 5 levels.".

The following additional Application Note would be inserted as Note 9:

"9. Multiple robberies are not grouped under § 3D1.2(d). Where specific offense characteristic (b)(6) applies, multiple counts will be grouped under § 3D1.2(c).".]

The Commission solicits comment on whether either of these approaches should be followed.

51. *Proposed Amendment:* Section 2B3.1(b)(3) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

The Commentary to § 2B3.1 captioned "Application Notes" is amended by deleting:

"4. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.",

and by renumbering Notes 5–8 as 4–7 respectively.

Reason for Amendment: The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury specific offense characteristic. Related amendment: 3 (Amendment to Chapter One, Part A, section 4(b)).

52. *Proposed Amendment:* Section 2B3.1(b)(1) is amended by deleting "Treat the loss for a financial institution or post office as at least $5,000." and inserting in lieu thereof:

"(H) If the offense involved the robbery of a financial institution or post office, and no increase from subdivisions (B–G) above applies, increase by 1 level.".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 2 by deleting "robbery or attempted robbery of a bank or post office results in a minimum one-level enhancement. There is no special enhancement for banks and post offices if the loss exceeds $10,000, however" and inserting in lieu thereof "there is a one level enhancement if the offense involved robbery or attempted robbery of a financial institution or post office and there was no loss or the loss did not exceed $2,500. If the loss exceeded $2,500, the applicable enhancement from subsection (b)(1)(B)–(G) is used instead".

Reasons for Amendment: The purpose of this amendment is to clarify the application of the guideline. No substantive change is made.

§ 2B3.2 Extortion by Force or Threat of Injury or Serious Damages

53. *Proposed Amendment:* Section 2B3.2 is amended in subsection (b)(2)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(2)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

Reason for Amendment: The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(2)(B) and (b)(2)(C). Related amendment: 16 (§ 2A2.1).

54. *Proposed Amendment:* Section 2B3.2(b)(3) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

The Commentary to § 2B3.2 captioned "Application Notes"is amended by deleting:

"4. If the degree of bodily injury falls between two injury categories, use of the intervening level (i.e., interpolation) is appropriate.",

and by renumbering Notes 5 and 6 as 4 and 5 respectively.

Reason for Amendment: The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, Section 4(b)).

§ 2B3.3 Blackmail and Similar Forms of Extortion

55. *Proposed Amendment:* Section 2B3.3(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 2B5.1 Offenses Involving Counterfeit Obligations of the United States

56. *Proposed Amendments:* Section 2B5.1 is amended in the title by inserting "Bearer" immediately before "Obligations".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by renumbering Note 2 as Note 3, and by inserting the following as Note 2:

"2. 'Counterfeit', as used in this section, means an instrument that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety. Offenses involving genuine instruments that have been altered are covered under § 2B5.2.".

The Commentary to § 2B5.1 captioned "Application Notes" is amended in the renumbered Note 3 by deleting ", paste corners of notes on notes of a different denomination,".

The Commentary to § 2B5.1 captioned "Application Notes" is amended by inserting the following additional Note:

"4. For the purposes of subsection (b)(1), do not count items that obviously were not intended for circulation (e.g., discarded defective items).".

Reason for Amendment: The purpose of this amendment is to clarify the coverage and operation of this guideline. Related Amendment: 57 (§ 2B5.2).

Additional Explanatory Statement: The proposed amendment revises the titles of §§ 2B5.1 and 2B5.2 to make the coverage of each guideline clear from the title. Presently, the coverage of § 2B5.1 is specified in Application Note 1 of the Commentary to this guideline. For § 2B5.1, the proposed amendment adopts the definition of "counterfeit" used in 18 U.S.C. 513. "Altered" obligations (e.g., the corner of a note of one denomination pasted on a note of a different denomination) are covered under § 2B5.2. The proposed amendment also adds an application note providing that items obviously not intended for circulation (e.g. discarded defective items) are not to be counted under subsection (b)(1).

§ 2B5.2 Forgery; Offenses Involving Counterfeit Instruments Other than Obligations of the United States

57. *Proposed Amendment:* Section 2B5.2 is amended in the title by inserting "Altered or" immediately following "Involving" and by inserting "Counterfeit Bearer" immediately following "Other than".

Reason for Amendment: The purpose of this amendment is to clarify the coverage of this guideline. Related amendment: 56 (§ 2B5.1).

§ 2B6.1 Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts with Altered or Obliterated Identification Numbers

58. *Proposed Amendment:* Section 2B6.1(b) is amended by renumbering subsection (b)(2) as (b)(3) and inserting the following as subsection (b)(2):

"(2) If the defendant was in the business of receiving and selling stolen property, increase by 2 levels.".

Reason for Amendment: The purpose of this amendment is to resolve an inconsistency between this section and § 2B1.2 created by the lack of an enhancement in this section for a person in the business of selling stolen property. Currently, a defendant convicted under the statutes covered by this section, which are expressly designed to cover trafficking in motor vehicles or parts with altered or obliterated identification numbers, could receive a lower offense level than if convicted of transportation or receipt of stolen property. This amendment eliminates this inconsistency by adding a 2 level increase if the defendant was in the business of selling stolen property. Two levels rather than four levels is the applicable increase to conform to § 2B1.2 because the base offense level of § 2B6.1 already incorporates the adjustment for more than minimal planning.

59. *Proposed Amendment:* Section 2B6.1(b)(2) is amended by deleting "organized criminal activity" and inserting in lieu thereof "an organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts".

The Commentary accompanying § 2B6.1 is amended by deleting:

"1. See Commentary to § 2B1.1 (Larceny, Embezzlement, and other Forms of Theft) regarding the adjustment in subsection (b)(2) for organized criminal activity, such as car theft rings and 'chop shop' operations.",

and inserting in lieu thereof the following:

"1. Subsection (b)(2) referring to an 'organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts' provides an alternative minimum measure of loss in the case of an ongoing, sophisticated operation such as an auto theft ring or 'chop shop.' 'Vehicles' refers to all forms of vehicles, including aircraft and watercraft. See Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).".

Reason for Amendment: The purpose of this amendment is to clarify the coverage of a specific offense characteristic. Related amendments: 34 (§ 2B1.1); 38 (§ 2B1.2).

60. *Proposed Amendment:* The Commentary to § 2B6.1 captioned "Statutory Provisions" and "Background" is amended by deleting "2320" wherever it appears and inserting in lieu thereof in each instance "2321".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

61. *Proposed Amendment:* Section 2B6.1(b) is amended by deleting "Characteristic" and inserting in lieu thereof "Characteristics".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 2C1.1 Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right

62. *Proposed Amendment:* Section 2C1.1(b) is amended by deleting "Apply" and inserting in lieu thereof "If more than one applies, use".

Reason for Amendment: The purpose of this amendment is to standardize the terminology used in the guidelines.

63. *Proposed Amendment:* Section 2C1.1(b)(1) is amended by deleting "action received" and inserting in lieu thereof "benefit received, or to be received,".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 in the first sentence by deleting "action received" and inserting in lieu thereof "benefit received, or to be received,", and by deleting "action (i.e., benefit or favor)" and inserting in lieu thereof "benefit"; in the second sentence by deleting "action received in return" and inserting in lieu thereof "benefit received or to be received,", and by deleting "such action" and inserting in lieu thereof "such benefit"; and in the third sentence by deleting "action" and inserting in lieu thereof "benefit".

Reason for Amendment: The purpose of this amendment is to clarify the guideline and commentary.

64. *Proposed Amendment:* The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 6 by deleting:

"When multiple counts are involved, each bribe is to be treated as a separate, unrelated offense not subject to § 3D1.2(d) or § 3D1.3(b). Instead, apply § 3D1.4. However, if a defendant makes several payments as part of a single bribe, that is to be treated as a single bribery offense involving the total amount of the bribe.",

and inserting in lieu thereof:

"In the case of multiple counts, treat each bribe as a separate, unrelated offense not subject to § 3D1.2(d); except, if the counts involved several related payments as part of a single bribe, treat the conduct as a single offense involving the total amount of the bribe (i.e., the counts are to be grouped under § 3D1.2(d)).".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

65. *Proposed Amendment:* The Commentary to § 2C1.1 captioned "Background" is amended in the eighth paragraph by deleting "extortions, conspiracies, and attempts" and inserting in lieu thereof "extortion, or attempted extortion,".

Reason for Amendment: This amendment corrects a minor technical error. This section expressly covers extortion and attempted extortion; conspiracy is covered through the operation of § 2X1.1. The present phraseology could be misread as overriding the application of § 2X1.1 in conspiracy cases.

66. *Issues concerning § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) and § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity):* For the purposes of this analysis, examples from § 2C1.1 (Bribery) are used. However, the analysis is equally applicable to § 2C1.2 (Gratuity).

Under the current bribery guideline, there is no enhancement for repeated instances of bribery if the conduct involves the same course of conduct or common scheme or plan and the same victim (as frequently is the case where the government is the victim) because such cases are grouped under § 3D1.2(b). In contrast, the fraud and theft guidelines provide a 2-level increase in cases of repeated instances under the second prong of the "more than minimal planning" definition.

Unlike the theft and fraud guidelines, it is arguable that the value of any bribe that was part of the same course of conduct or a common scheme or plan as the offense of conviction, but not included in the count of conviction, is excluded from consideration. This is because § 1B1.3(a)(2), which authorizes consideration of conduct not expressly included in the offense of conviction but part of the same course of conduct or common scheme or plan, applies only to offenses grouped under § 3D1.2(d). Thus, if the defendant pleads to one count of a bribery offense involving one $10,000 bribe in satisfaction of a 15 count indictment involving an additional $80,000 in separate bribes that were part of the same course of conduct, the current bribery guideline, unlike the theft and fraud guidelines, would not take into account the additional $80,000, and there would be no increase for repeated instances.

The current guideline may also create various anomalies because the multiple count rule (which applies only where the offenses are not grouped under § 3D1.2(b)) increases the offense level much faster than the monetary table. For example, an elected public official who takes three unrelated $200 bribes has an offense level of 21; the same defendant who took two unrelated $500,000 bribes would have an offense level of 20.

The Commission seeks comment and suggestions on whether and how the guidelines should be amended to address these issues. One possible way to address these issues is presented below, but the Commission seeks recommendations as to any other appropriate solutions. In the example shown below, an enhancement of 2 levels is added for repeated instances (similar to the second prong of "more than minimal planning" in the theft and fraud guidelines) and § 2D1.2(d) is amended to include bribery offenses.

An illustration of one possible way of addressing these issues follows:

Section 2C1.1(b) is amended by deleting "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)" respectively; and by deleting "Apply the greater" and inserting in lieu thereof:

"(1) If the offense involved more than one bribe, increase by 2 levels.

(2) If more than one of the following applies, use the greater:".

The Commentary to § 2C1.1 captioned "Application Notes" is amended by deleting the text of Note 6 and inserting in lieu thereof:

"Related payments that, in essence, constitute a single bribe (e.g., a number of installment payments for a single action) are to be treated as a single bribe, even if charged in separate counts.".

Section 2C1.2(b) is amended by deleting "(1)" and "(2)" and inserting in lieu thereof "(A)" and "(B)" respectively; and by deleting "Apply the greater" and inserting in lieu thereof:

"(1) If the offense involved more than one gratuity, increase by 2 levels.

(2) If more than one of the following applies, use the greater:".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by deleting the text of Note 4 and inserting in lieu thereof:

"Related payments that, in essence, constitute a single gratuity (e.g., separate payments for airfare and hotel for a single vacation trip) are to be treated as a single gratuity, even if charged in separate counts.".

Section 3D1.2(d) is amended in the listing of offense sections in the third paragraph by deleting "§ 2C1.1", and in the listing of offense sections in the second paragraph by inserting in order by section number "§§ 2C1.1, 2C1.2;".

Section 3D1.5 is amended in the Illustrations following the Commentary by deleting Illustration 2 and renumbering Illustrations 3, 4, and 5 as 2, 3 and 4 respectively.

§ 2C1.2 Offering, Giving, Soliciting, or Receiving a Gratuity

67. *Proposed Amendment:* Section 2C1.2(b) is amended by deleting "Apply" and inserting in lieu thereof "If more than one applies, use".

Reason for Amendment: The purpose of this amendment is to standardize the terminology used in the guidelines.

68. *Proposed Amendment:* The Commentary to § 2C1.2 captioned "Application Notes" is amended in Note 4 by deleting:

"When multiple counts of receiving a gratuity are involved, each count is to be treated as a separate, unrelated offense not subject to § 3D1.2(d) or § 3D1.3(b). Instead, apply § 3D1.4.",

and inserting in lieu thereof the following:

"In the case of multiple counts, treat each gratuity as a separate, unrelated offense not subject to § 3D1.2(d); except, if the counts involved several related payments as part of a single gratuity, treat the conduct as a single offense involving the total amount of the gratuity (i.e., the counts are to be grouped under § 3D1.2(d)).".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary and to specify how multiple counts that involve several related payments as part of a single gratuity are to be treated.

§ 2D1.1 Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession With Intent To Commit These Offenses)

69. *Proposed Amendment:* Section 2D1.1(a) is amended by deleting:

"(a) Base Offense Level:

(1) 43, for an offense that results in death or serious bodily injury with a prior conviction for a similar drug offense; or

(2) 38, for an offense that results in death or serious bodily injury and involved controlled substances (except Schedule III, IV, and V controlled substances and less than: (A) Fifty kilograms of marihuana, (B) ten kilograms of hashish, and (C) one kilogram of hashish oil); or

(3) For any other offense, the base offense level is the level specified in the Drug Quantity Table below.",

and inserting in lieu thereof:

"(a) Base Offense Level:

(1) 43, if the defendant is convicted under 21 U.S.C. 841 (b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960 (b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or

(2) 38, if the defendant is convicted under 21 U.S.C. 84 1(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. 960 (b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from use of the substance; or

(3) The offense level specified in the Drug Quantity Table set forth in subsection (c) below.".

Section 2D1.1 captioned "DRUG-QUANTITY TABLE" is amended by deleting "DRUG QUANTITY TABLE" and inserting in lieu thereof "(c) DRUG QUANTITY TABLE".

Reason for Amendment: The purpose of this amendment is to provide that subsections (a) and (b) apply only in the case of a conviction under circumstances specified in the statutes cited.

70. *Proposed Amendment:* Section 2D1.1(b) is amended by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

Reason for Amendment: The purpose of the amendment is to clarify the guideline. Related amendment: 16 (§ 2A2.1).

71. *Proposed Amendment:* Section 2D1.1(b) is amended by adding the following new Specific Offense Characteristic:

"(2) If the defendant is convicted of violating 21 U.S.C. 960(a) under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled substance, or (B) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels, but if the resulting offense level is less than level 26, increase to level 26.";

The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following new Application Note:

"(14) If subsection (b)(2)(B) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).";

The Commentary to § 2D1.1 captioned "Background" is amended by inserting the following new paragraph between the third and fourth paragraphs:

"Specific Offense Characteristic (b)(2) is mandated by section 6453 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).".

Reason for Amendment: The purpose of this amendment is to implement the directive to the Commission in section 6453 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub L. 100-690).

72. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by adding in the appropriate place (by alphabetical order) the following new subdivisions—

(1) In the listing captioned "Schedule III Substances":

"1 gm of Benzphetamine=4 mg of heroin/4 gm of marihuana",

(2) In the listing captioned "Cocaine and Other Schedule I and II Stimulants":

"1 gm of 4-Methyl-aminorex ('Euphoria')=0.5 gm of cocaine/0.1 gm of heroin",

Reason for Amendment: The purpose of this amendment is to make the Drug Equivalency Table more comprehensive.

73. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 immediately following the caption "Cocaine and Other Schedule I and II Stimulants" and the caption "LSD, PCP, and Other Hallucinogens" by inserting in each instance "(and their immediate precursors)".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

74. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by deleting:

"1 gm of Phenylacetone/P_2P (amphetamine precursor)=0.375 gm of cocaine/0.075 gm of heroin

1 gm of Phenylacetone/P_2P (methamphetamine precursor)=0.833 gm of cocaine/0.167 gm of heroin"

and inserting in lieu thereof:

"1 gm Phenylacetone/P_2P (when possessed for the purpose of manufacturing methamphetamine)=0.833 gm of cocaine/0.167 gm of heroin

1 gm Phenylacetone/P_2P (in any other case)=0.375 gm of cocaine/0.075 gm of heroin".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary and correct a typographical error.

75. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by deleting: "The following dosage equivalents for certain common drugs are provided by the Drug Enforcement Administration to facilitate the application of § 2D1.1 of the guidelines in cases where the number of doses, but not the weight of the controlled substances are known. The dosage equivalents provided in these tables reflect the amount of the pure drug contained in an average dose. Dosage Equivalency Table",

and inserting in lieu thereof the following:

"11. If the number of doses, pills, or capsules but not the weight of the controlled substance is known, multiply the number of doses, pills, or capsules by the typical weight per dose to estimate the total weight of the controlled substance (e.g., 100 doses of Bufotenine at 1 mg per dose=100 mg of Bufotenine). The Typical Weight Per Unit Table, prepared from information provided by the Drug Enforcement Administration, displays the typical weight per dose, pill, or capsule for common controlled substances.—Typical Weight Per Unit (Dose, Pill, or Capsule) Table".

The Commentary to § 2D1.1 captioned "Application Notes" is amended by renumbering the current Note 11 as Note 12.

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

76. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by adding the following section immediately after the section captioned "Depressants":

"Marihuana

1 marihuana cigarette=0.5 gm".

Reason for Amendment: The purpose of this amendment is to make the listing more comprehensive.

77. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting the following as an additional note:

"13. If the quantity of drugs substantially exceeds that required for level 36, an upward departure may be warranted.".

Reason for Amendment: The purpose of this amendment is to add an Application Note to the Commentary of § 2D1.1 concerning possible departure in the case of an extremely large quantity of drugs.

78. *Proposed Amendment:* The Drug Quantity Table to § 2D1.1 is amended by inserting "Methamphetamine," immediately following "PCP or" wherever it appears and by inserting "or Pure Methamphetamine" following "Pure PCP" wherever it appears.

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 by inserting "and methamphetamine" immediately following "phencyclidine (PCP)", by inserting ", pure methamphetamine" immediately following "amounts of pure PCP" wherever it appears, and by inserting "or methamphetamine" following "appropriate for PCP".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10, in the Drug Equivalency Table, Cocaine and Other Schedule I and II Stimulants by deleting "2.0 gm of cocaine/0.4 gm of heroin" immediately following "1 gm of Methamphetamine =" and inserting in lieu thereof "5.0 gm of cocaine/1.0 gm of heroin" and by deleting "0.833 gm of cocaine/0.167 gm of heroin" immediately following "(methamphetamine precursor)" and inserting in lieu thereof "2.08 gm of cocaine/0.418 gm of heroin".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 by inserting "methamphetamine, fentanyl," immediately following "i.e., heroin, cocaine, PCP," and by deleting:

"one gram of a substance containing methamphetamine, a Schedule I stimulant, is to be treated as the equivalent of two grams of a substance containing cocaine in applying the Drug Quantity Table.",

and inserting in lieu thereof:

"one gram of a substance containing oxymorphone, a Schedule I opiate, is to be treated as the equivalent of five grams of a substance containing heroin in applying the Drug Quantity Table.".

Reason for Amendment: The purpose of this amendment is to reflect statutory changes with respect to the drug methamphetamine.

79. *Proposed Amendment:* The Drug Quantity Table in § 2D1.1 is amended by deleting, "or other Schedule I or II controlled" wherever it appears and inserting "Schedule I or II Depressants or" immediately before "Schedule III", wherever it appears, and by inserting "substances" immediately after "Schedule IV" and immediately after "Schedule V" wherever they appear.

The Drug Quantity Table in § 2D1.1 is amended by deleting "equivalent" wherever it appears and inserting in lieu thereof "the equivalent amount of other".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10, in the tables captioned Drug Equivalency Tables, by deleting "Other Schedule I or II Substances" and inserting in lieu thereof "Schedule I and II Depressants".

Reason for Amendment: The purpose of this amendment is to clarify the guideline and Commentary.

80. *Elimination of Minor Gaps in the Drug Quantity Table:* There are minor

gaps in the drug quantity table (e.g., Level 24 applies to 80–99 kg of Marihuana; Level 26 applies to 100–399 kg of Marihuana). Questions have repeatedly been raised as to what is proper offense level for a quantity falling between the stated levels (e.g., 99.4 kg of Marihuana). Because the "base offense levels in § 2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute" (Guidelines Manual p. 2.46), the correct interpretation is that at least 100 kg is required for Level 26.

The Commission seeks comment on eliminating these gaps by revising the second through the fifteenth paragraph of the Table to read "At least—but less than—" for each controlled substance (e.g., Level 24 would include "At least 80 kg but less than 100 kg of Marihuana"; Level 26 would include "At least 100 kg but less than 400 kg of Marihuana").

81. *Proposed Amendment:* Section 2D1.1 is amended in the table captioned "Drug Quantity Table" by deleting "**" immediately following "Level 32" and immediately following "Level 26", and by deleting "** Statute specifies a mandatory minimum sentence.".

The footnote marked "*" to the Drug Equivalency Table in § 2D1.1 is amended by deleting the text of the footnote in its entirety as follows:

"The scale amounts for all controlled substances refer to the total weight of the controlled substance. Consistent with the provisions of the Anti-Drug Abuse Act, if any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.",

and inserting in lieu thereof:

"Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any compound or mixture containing a detectable amount of the controlled substance. If a mixture or compound contains more than one controlled substance, the weight of the entire mixture or compound is assigned to the controlled substance that results in the greater offense level. In the case of a mixture or compound containing PCP or methamphetamine, use the offense level determined by the entire weight of the mixture or compound, or the offense level determined by the weight of the pure PCP or methamphetamine, whichever is greater.".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 9 by inserting immediately before the period at the end of the first sentence:

", except in the case of PCP or methamphetamine for which the guideline itself provides for the consideration of purity (see the footnote to the Drug Quantity Table)",

and by deleting:

"Congress provided an exception to purity considerations in the case of phencyclidine (PCP). 21 U.S.C. 841(b)(1)(A). The legislation designates amounts of pure PCP and mixtures in establishing mandatory sentences. The first row of the table illustrates this distinction as one kilogram of PCP or 100 grams of pure PCP. Allowance for higher sentences based on purity is not appropriate for PCP.".

The Commentary to 2D1.1 captioned "Background" is amended in the third paragraph by deleting "with two asterisks represent mandatory minimum sentences established by the Anti-Drug Abuse Act of 1986. These levels reflect sentences" and inserting in lieu thereof "at levels 32 and 36 establish guideline ranges", and by deleting "requirement" and inserting in lieu thereof "minimum".

Reason for Amendment: The purposes of this amendment are to clarify the operation of the guideline, and to delete an unecessary footnote.

82. *Calculation of the Weight of LSD for Guideline Purposes:* The question has repeatedly arisen as to whether the carrier on which D-lysergic acid diethylamide (LSD) is placed should be considered as part of the mixture and therefore weighed.

LSD may be sold on various carriers such as a sugar cube or on blotter paper. A sugar cube weighs approximately 2,270 mg., a piece of blotter paper the size used to hold one dose weighs about 14 mg., and a dose of LSD weighs about .05 mg. Therefore, if the carrier was weighed as part of the mixture, a person selling 100 doses of LSD would have an offense level of 32, or 26, or 12 depending on whether the LSD was on a sugar cube, blotter paper, or in a liquid form.

The Commission seeks comment on the most appropriate response to this situation (i.e., should or should not the Commission amend the guidelines or Commentary to exclude the weight of the "carrier" in LSD cases for guideline purposes?).

83. *Relationship of Marihuana Plants to Marihuana:* Section 6479 of the Omnibus Anti-Drug Abuse Act of 1988 alters the manner in which the offense level for marihuana plants is calculated under 21 U.S.C. 841. Under 21 U.S.C. 841, as amended, an offense involving 100 marihuana plants is treated as equivalent to an offense involving 100 kilograms of marihuana, and an offense involving 1,000 marihuana plants is treated as equivalent to an offense involving 1,000 kilograms of marihuana. From the legislative history, it appears that this change was directed primarily towards large scale marihuana growers. The statutory authorized maximum for an offense involving fewer than 50 plants (five years) remains unchanged.

This statutory revision requires revision of the relationship of marihuana plants to marihuana in the guidelines for offense levels 26 and above (currently 100 marihuana plants is treated as the equivalent of 10 kilograms of marihuana; 1000 marihuana plants is treated as the equivalent of 100 kilograms of marihuana).

A more difficult question is how to treat this relationship when there are fewer than 100 marihuana plants. Information from the Drug Enforcement Administration indicates that the yield from a marihuana plant varies but the average yield is about 0.4 kilogram. A plant could be expected to yield 1 kilogram only with sophisticated growing methods.

The Commission seeks comment on how this statutory revision should be addressed. Specifically, should or should not the Commission use a lower ratio of marihuana plants to marihuana if there are fewer than 100 plants; and, if so, at which point or points should a lower ratio be used?

84. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of the "Drug Equivalency Tables" captioned "Schedule I or II Opiates" on the line beginning "piperidinyl] Propanamide) =" by deleting "31.25 gm" and inserting in lieu thereof "2.5 gm".

Reason for Amendment: The purpose of this amendment is to conform the equivalency for fentanyl to that set forth in the Drug Quantity Table and statute.

85. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of "Dosage Equivalency Table" captioned "Hallucinogens" by deleting "STP (DOM) Dimethoxyamphetamine" and inserting in lieu thereof "2, 5-Dimethoxy-4-methylamphetamine (STP, DOM)".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of the "Dosage Equivalency Table" in the section captioned "Stimulants" by deleting

"Preludin 25 mg" and inserting in lieu thereof "Phenmetrazine (Preludin) 75 mg".

Reason for Amendment: The purpose of this amendment is to substitute generic names for the two substances and to conform the dosage of Phenmetrazine currently being manufactured.

Additional Explanatory Statement: This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

86. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the section captioned "Schedule III Substances" by deleting:

"1 gm of Thiohexethal = 2 mg of heroin/2 gm of marihuana",

in the "Dosage Equivalency Table" in the section captioned "Hallucinogens" by deleting:

"Anhalamine—300 mg",
"Anhalonide—300 mg",
"Anhalonine—300 mg",
"Lophophorine—300 mg",
"Pellotine—300 mg",

and in the Dosage Equivalency Table in the section captioned "Depressants" by deleting:

"Brallobarbital—30 mg",
"Eldoral—100 mg",
"Eunarcon—100 mg",
"Hexethel—100 mg",
"Thiohexethal—60 mg".

Reason for Amendment: The purpose of this amendment is to delete substances that either are not controlled substances or are no longer manufactured.

Additional Explanatory Statement: This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

87. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the section captioned "Cocaine and Other Schedule I and II Stimulants" by inserting in the appropriate place in alphabetical order:

"1 gm of Methylphenidate (Ritalin) = 0.5gm of cocaine/0.1 gm of heroin",

and in the section captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by inserting in the appropriate place in alphabetical order:

"1 gm of 3, 4-Methylenedioxy-N-ethylamphetamine/MDEA = .03 gm of heroin or PCP",

and in the Dosage Equivalency Table in the section captioned "Depressants" by inserting in the appropriate place in alphabetical order:

"Glutethimide (Doriden) = 500 mg".

Reason for Amendment: The purpose of this amendment is to make the Drug Equivalency Tables and Dosage Equivalency Table more comprehensive.

Additional Explanatory Statement: This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

88. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" in the section captioned "Hallucinogens" by deleting ".1 mg" in the line beginning "LSD (Lysergic acid diethylamide)" and inserting in lieu thereof ".05 mg", by deleting "LSD tartrate .05 mg", by deleting "Peyote 12 mg", and by inserting in the appropriate place in alphabetical order:

"Peyote (dry)—12 gm",
"Peyote (wet)—120 gm",
"Psilocybe mushrooms (dry)—5 gm",
"Psilocybe mushrooms (wet)—50 gm".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Dosage Equivalency Table" in the section captioned "Stimulants" by deleting "Ethylamphetamine HCL 12 mg" and "Ethylamphetamine SO_4 12 mg", by deleting "Amphetamines" and inserting in lieu thereof "Amphetamine", by deleting "Methamphetamines" and inserting in lieu thereof "Methamphetamine", and by deleting "Methamphetamine combinations 5 mg".

Reason for Amendment: The purposes of this amendment are to provide more accurate approximations of the dosage for certain controlled substances, and to eliminate unnecessary references.

Additional Explanatory Statement: This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

89. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in "Drug Equivalency Tables" in the section captioned "Schedule III Substances" by deleting "2 mg of heroin/2 gm of marihuana" immediately following "1 gm of Glutethimide =" and inserting in lieu thereof "0.4 mg of heroin/0.4 gm of marihuana",

and by deleting:

"1 gm of Paregoric = 2 mg of heroin/2 gm of marihuana.

1 gm of Hydrocodone Cough Syrups = 2 mg of heroin/2 gm marihuana",

and inserting in lieu thereof:

"1 ml of Paregoric = 0.25 mg of heroin/0.25 gm of marihuana.

1 ml of Hydrocodone Cough Syrup = 1 mg of heroin/1 gm of marihuana".

Reason for Amendment: The purpose of this amendment is to provide more accurate approximations of the equivalencies for certain controlled substances.

Additional Explanatory Statement: This amendment was recommended by the Drug Control Section of the Drug Enforcement Administration.

90. *Proposed Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the section of the "Drug Equivalency Tables" captioned "LSD, PCP, and Other Schedule I and II Hallucinogens" by deleting:

"1 gm of Liquid phencyclidine = 0.1 gm of heroin or PCP".

Reason for Amendment: The purpose of this amendment is to delete an incorrect equivalency.

§ 2D1.2 Involving Juveniles in the Trafficking of Controlled Substances

91. *Proposed Amendment:* The Commentary to § 2D1.2 captioned "Application Notes" is amended in Note 1 by deleting "amount from the first and second offense" and inserting in lieu thereof "amounts from the two offenses not involving juveniles".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

92. *Sections 6454, 6458, and 6459 of the Omnibus Anti-Drug Abuse Act of 1988:* Section 6458 expands the coverage of 21 U.S.C. 845(a) to include playgrounds, youth centers, swimming pools, and video arcades. Section 6459 amends 21 U.S.C. 845(a) to include "receiving a controlled substance from a person under 18 years of age, other than an immediate family member, in violation of this title or title III." Section 6454 contains the following direction to the Sentencing Commission:

"(a) In General–Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines to provide that a defendant convicted of violating section 405, 405A, or 405B of the Controlled Substances Act (21 U.S.C. 845, 845a or 845b) involving a person under 18 years of age shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(1) Two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

(2) In no event less than level 26.

(b) Effects of Amendment—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

(c) Multiple Enhancements—The guidelines referred to in subsection (a), as promulgated or amended under such subsection, shall provide that an offense that could be subject to multiple enhancements pursuant to such subsection is subject to not more than one such enhancement."

The Commission seeks comment on the most appropriate method of responding to these statutory provisions. One possible approach follows, but suggestions for alternative approaches are also invited. For example, §§ 2D1.2 and 2D1.3 could be amended by deleting the guidelines and accompanying Commentary in their entirety and inserting in lieu thereof:

"§ 2D1.2 Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals

(a) Base offense level:

(1) 2 plus the offense level from § 2D1.1, but in no event less than level 26, if the offense involved a person less than 18 years of age; or

(2) 1 plus the offense level from § 2D1.1, but in no event less than level 13, in any other case.

Commentary

Statutory Provisions: 18 U.S.C. 845, 845a, 845b.

Background: This section implements the direction to the Commission in section 6454 of the Omnibus Anti-Drug Abuse Act of 1988.".

This approach would implement the directive in section 6454, expand the coverage of the guideline to include the provision of sections 6458 and 6459, and provide an intermediate enhancement for the portions of 21 U.S.C. 845, 845a, and 845b not included in the statutory direction to the Commission.

§ 2D1.4 Attempts and Conspiracies

93. *Proposed Amendment:* The Commentary to § 2D1.4 captioned "Application Notes" is amended in Note 1 by deleting:

"Where the defendant was not reasonably capable of producing the negotiated amount, the court may depart and impose a sentence lower than the sentence that would otherwise result",

and inserting in lieu thereof:

"However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing.".

Reason for Amendment: Application Note 1 currently provides that the "weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount." The instruction then provides "Where the defendant was not reasonably capable of producing the negotiated amount the court may depart and impose a sentence lower than the sentence that would otherwise result." This provision may result in inflated offense levels in uncompleted offenses where a defendant is merely "puffing," even though the court is then authorized to address the situation by a downward departure. This amendment provides a more direct procedure for calculating the offense level where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount.

94. *Proposed Amendment:* The Commentary to § 2D1.4 captioned "Application Notes" is amended in Note 1 by deleting "the sentence should be imposed only on the basis of the defendant's conduct or the conduct of co-conspirators in furtherance of the conspiracy that was known to the defendant or was reasonably foreseeable" and inserting in lieu thereof "see Application Note 1 to § 1B1.3 (Relevant Conduct).".

Reason for Amendment: The purpose of this amendment is to conform this Commentary to the revision of § 1B1.3 (amendment 12).

95. *Proposed Amendment:* Section 2D1.4(a) is amended by deleting "participating in an incomplete" and inserting in lieu thereof "a".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

§ 2D1.5 Continuing Criminal Enterprise

96. *Proposed Amendment:* Section 2D1.5 is amended by deleting: "(a) Base Offense Level: 36" and inserting in lieu thereof the following:

"(a) Base Offense Level (Apply the greater):

(1) 4 plus the offense level from § 2D1.1 applicable to the underlying offense; or

(2) [37][38].".

The Commentary to § 2D1.5 captioned "Background" is amended in the first paragraph by deleting "base offense level of 36" and inserting in lieu thereof "minimum base offense level of [37][38]", and in the second paragraph by deleting "for second convictions" and inserting in lieu thereof "for the first conviction, a 30 year mandatory minimum penalty for a second conviction,".

Reason for Amendment: The purpose of this amendment is to reflect the increased mandatory minimum penalty for this offense pursuant to section 6481 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).

Additional Explanatory Statement: The Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690) creates an increased mandatory minimum penalty for violations of 21 U.S.C. 848. The Commission seeks public comment on the general question of how the guidelines should incorporate mandatory minimum penalties. Specifically, if the Commission chooses to reflect the minimum penalty in the base offense level, what principles should govern the selection of the offense level? In this instance, the mandatory minimum penalty (240 months) is approximately the midpoint of the sentencing range for a defendant in Criminal History Category I if level 37 is chosen, but it is close to the low end of the range if level 38 is chosen. Which of these approaches, or what other approach, is most appropriate?

§ 2D1.6 (Use of a Communications Facility in Committing Drug Offense)

97. *Proposed Amendment:* Section 2D1.6 is amended by deleting ":12" and inserting in lieu thereof: "(Apply the greater):

(1) [3 levels less than the][The] offense level from § 2D1.1 applicable to the controlled substance offense committed, caused, or facilitated; or

(2) 12.".

The Commentary to § 2D1.6 is amended by inserting immediately before "Background" the following:

"*Application Note:*

1. It is expected that, in the vast majority of cases, the offense level for the underlying offense (the controlled substance offense committed, caused, or facilitated) will be level 12 or greater. An alternative base offense level of 12 is provided under subsection (a)(2) because it may not always be possible to determine the offense level for the underlying offense. In the rare case in which it can be determined that the offense level for the underlying offense is less than level 12, a downward departure may be warranted.".

Reason for Amendment: The purpose of this amendment is to reduce unwarranted disparity by requiring consideration of the amount of the controlled substance involved in the offense, thus conforming this guideline to analogous guidelines.

Additional Explanatory Statement: The statute to which this guideline applies (21 U.S.C. 843(b)) prohibits the use of a communications facility to commit, cause, or facilitate a felony drug offense. Frequently, a conviction under this statute is the result of a plea bargain because the statute has a low maximum (four years with no prior felony drug conviction; eight years with a prior felony drug conviction) and no mandatory minimum.

The current guideline has base offense level of 12 and no specific offense characteristics. Therefore, the scale of the underlying drug offense does not affect the guideline. This results in a departure being warranted in the vast majority of cases if the scale of the underlying drug offense is a permissible grounds for departure. A recent Second Circuit decision (U.S. v. Correa-Vargas, CA 2, No. 88–1167, 10/18/88), for example, upheld a lower court decision for a substantial departure based upon the quantity of the controlled substance involved in the underlying offense.

Without guidance as to whether how far to depart, the potential for unwarranted disparity is substantial. Under the proposed amendment, the guideline would take into account the scale of the underlying offense.

The Commission seeks comment on whether the base offense level in subsection (a)(1) should be set at the offense level from § 2D1.1 for the underlying offense; or whether it should be set at 3-levels less than that for the underlying offense, which would be comparable to the treatment of certain uncompleted conspiracies and attempts under § 2X1.1

§ 2D1.10 Endangering Human Life While Illegally Manufacturing a Controlled Substance

98. *Proposed Amendment:* Chapter Two, Part D is amended by inserting as an additional guideline the following:

"§ 2D1.10 Endangering Human Life While Illegally Manufacturing a Controlled Substance

(a) Base Offense Level: 3 plus the offense level from the Drug Quantity Table in § 2D1.1, but in no event less than 20.

Commentary

Statutory Provision: 21 U.S.C. _____.".

Reason for Amendment: The purpose of this amendment is to create a new guideline covering the new offense in section 6301 of the Omnibus Anti-Drug Abuse Act of 1988.

Additional Explanatory Statement: Under the proposed guideline, the offense level would vary with the type and quantity of drug manufactured plus a 3 level enhancement for the risk created, with a minimum offense level of 20.

Chapter Two Part D, Subpart I

99. *Chapter Two Part D, Subpart I:* Sections 6053, 6055, and 6057 of the Omnibus Anti-Drug Abuse Act of 1988: Sections 6053, 6055, and 6057 of the Omnibus Anti-Drug Abuse Act of 1988 concern the chemicals and equipment used to manufacture controlled substances. Section 6053 creates recordkeeping requirements for "listed precursor chemicals" and "listed essential chemicals." Section 6055 makes it unlawful to (1) possess a listed chemical with intent to manufacture a controlled substance, (2) possess or distribute a listed chemical knowing or having reasonable cause to believe it will be used to manufacture a controlled substance, and (3) import or export such chemicals. Section 6057 makes it unlawful to possess, manufacture, distribute, or import certain laboratory equipment and supplies with intent to manufacture a controlled substance. The Commission intends to promulgate guidelines to cover these statutes based upon the type and quantity of the listed substance and equipment, and the potential amount of the controlled substance that could be produced. The Commission seeks public comment on how to structure a guideline that will best accomplish this result.

100. *Section 6254 (h) of the Omnibus Anti-Drug Abuse Act of 1988:* Section 6254(h) of the Omnibus Anti-Drug Abuse Act of 1988 creates a new offense of polluting Federal lands in the course of committing a substantive violation of 21 U.S.C. § 841(a) (knowing and intentional manufacture, distribution, or dispensing, or possession with intent to manufacture, distribute, or dispense a controlled or counterfeit substance). The statute provides a maximum of 5 years imprisonment for any person "who violates [21 U.S.C. 841](a)" and:

knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land and by such use—

(A) Creates a serious hazard to humans, wildlife, or domestic animal,

(B) Degrades or harms the environment or natural resources or

(C) Pollutes an aquifer, spring, stream, river, or body of water[.]

The Commission intends to add a guideline to cover this offense. The Commission seeks comment as to the appropriate base offense level and specific offense characteristics for this guideline, and whether this guideline should be incorporated in Part D or in Part Q of this Chapter.

§ 2D2.1 Unlawful Possession

101. *Proposed Amendment:* Section 2D2.1 is amended by inserting the following as a new subsection:

"(b) Cross Reference

(1) If the defendant is subject to the penalties pertaining to possession of cocaine base set forth in the third sentence of 18 U.S.C. 844(a), apply § 2D1.1 as though the defendant had been convicted of possession with intent to distribute the cocaine base.";

The Commentary to § 2D2.1 captioned "Background" is amended by deleting:

"Background: Absent a prior drug related conviction, the maximum term of imprisonment authorized by statute is one year. With a single prior drug related conviction, a mandatory minimum term of imprisonment of fifteen days is required by statute and the maximum term of imprisonment authorized is increased to two years. With two or more prior drug related convictions, a mandatory minimum term of imprisonment of ninety days is required by statute and the maximum term of imprisonment authorized is increased to three years.",

and inserting in lieu thereof the following:

"Background: 21 U.S.C. 844(a) sets forth mandatory minimum penalties for several categories of simple possession cases. When a mandatory minimum penalty is higher than the guideline sentence, the statutory minimum becomes the guideline sentence. § 5G1.1(b). The cross-reference to § 2D1.1 accommodates the mandatory minimum penalty for possession of cocaine base.".

Reason for Amendment: The purpose of this amendment is to reflect the mandatory minimum penalty created by section 6371 of the Omnibus Anti-Drug Abuse Act of 1988.

§ 2D2.3 Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs

102. *Proposed Amendment:* Section 2D2.3 is amended by deleting: "(a) Base Offense Level: 8", and inserting in lieu thereof the following:

"(a) Base Offense Level:

(1) [26][28], if death resulted; or

(2) 21, if serious bodily injury resulted; or

(3) 8, otherwise.

[(b) Note:

If the defendant is convicted of a single count involving the death or serious bodily injury of more than one person, apply Chapter Three, Part D (Multiple Counts) as if the defendant had been convicted of a separate count for each such victim.]".

The Commentary to § 2D2.3 is amended by adding, as an additional section:

"Background: This guideline implements the specific directions to the Commission in section 6482 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).".

Reason for Amendment: The purpose of this amendment is to implement the directive to the Commission in section 6482 of the Omnibus Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).

Additional Explanatory Statement: Section 6482 of the Omnibus Anti-Drug Abuse Act of 1988 directs the Commission to set an offense level "that is not less than level 26" if death results from a violation of 18 U.S.C. 342 and "not less than level 21" if serious bodily injury results. The Commission seeks public comment on the appropriate means of implementing with this directive. Specifically, should the Commission choose offense level 26 or a higher offense level, such as level 28, when Congress directs the use of a level "not less than" level 26. If a level 26 is chosen, is the note in proposed subsection (b) a suitable device to take account of multiple deaths or injury resulting from this offense.

§ 2E1.1 Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations

103. *Proposed Amendment:* The Commentary to § 2E1.1 captioned "Application Notes" is amended by inserting the following note:

"4. Certain conduct may be charged in the count of conviction as part of a "pattern of racketeering activity" even though the defendant has previously been sentenced for that conduct. Where such previously imposed sentence resulted from a conviction sustained prior to the last overt act of the instant offense, treat as a prior sentence under § 4A1.2(a)(1) and not as part of the instant offense. This treatment is designed to produce a result consistent with the distinction between the instant offense and criminal history found throughout the guidelines. If this treatment produces an anomalous result in a particular case, a guideline departure may be warranted.".

Reason for Amendment: This amendment adds an application note to clarify the treatment of certain conduct for which the defendant previously has been sentenced as either part of the instant offense or prior criminal record. The amendment treats such conduct consistently with the treatment of similar conduct in § 2D1.5 (Continuing Criminal Enterprise) as amended effective 10/15/88.

§ 2E1.3 Violent Crimes in Aid of Racketeering Activity

104. *Proposed Amendment:* The Commentary to § 2E1.3 captioned "Statutory Provision" is amended by deleting "1952B" and inserting in lieu thereof "1959 (formerly 18 U.S.C. 1952B)".

Reason for Amendment: The purpose of this amendment is to reflect the redesignation of this statute.

* * * * *

§ 2E1.4 Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire

105. *Proposed Amendment:* The Commentary to § 2E1.4 captioned "Statutory Provision" is amended by deleting "1952A" and inserting in lieu thereof "1958 (formerly 18 U.S.C. 1952A)".

Reason for Amendment: The purpose of this amendment is to reflect redesignation of this statute.

* * * * *

§ 2E1.5 Hobbs Act Extortion or Robbery

106. *Proposed Amendment:* Section 2E1.5 is amended by deleting "the guideline provision for extortion or robbery" and inserting in lieu thereof "§ 2B3.1 (Robbery), § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage), § 2B3.3 (Blackmail and Similar Forms of Extortion), or § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right)".

The Commentary to § 2E1.5 captioned "Application Notes" is amended by deleting the entire text thereof, including the caption "Application Note:".

Reason for Amendment: The purpose of this amendment is to move material from the commentary to the guideline where it more appropriately belongs.

§ 2E2.1 Making, Financing, or Collecting an Extortionate Extension of Credit

107. *Proposed Amendment:* Section 2E2.1 is amended in subsection (b)(1)(B) by deleting "a firearm or a dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)", and in subsection (b)(1)(C) by deleting "a firearm or other dangerous weapon" and inserting in lieu thereof "any dangerous weapon (including a firearm)".

Reason for Amendment: The purposes of this amendment are to clarify that a firearm is a type of dangerous weapon and to remove the inconsistency in language between specific offense characteristic subdivisions (b)(1)(B) and (b)(1)(C). Related amendment: 16 (§ 2A2.1).

108. *Proposed Amendment:* Section 2E2.1(b)(2) is amended by inserting at the end:

"(D) If the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels; or

(E) If the degree of injury is between that specified in subdivisions (B) and (C), increase by 5 levels.".

Reason for Amendment: The purpose of this amendment is to provide intermediate adjustment levels for the degree of bodily injury. Related amendment: 3 (Amendment to Chapter One, Part A, Section 4(b)).

109. *Proposed Amendment:* Section 2E2.1(b)(3)(A) is amended by inserting "or" immediately following "4 levels;".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 2E5.1 Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan

110. *Proposed Amendment:* Section 2E5.1 is amended in the title by deleting "Bribery or Gratuity" and inserting in lieu thereof "Offering, Accepting, or Soliciting a Bribe or Gratuity".

Reason for Amendment: The purpose of amending the title of this section is to ensure that attempts and solicitations are expressly covered for purposes of 2X1.1.

§ 2E5.2 Theft or Embezzlement From Employee Pension and Welfare Benefit Plans

111. *Proposed Amendment:* Section 2E5.2 is amended by deleting:

"(a) Base Offense Level: 4

(b) Specific Offense Characteristics

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the defendant had a fiduciary obligation under the Employee Retirement Income Security Act, increase by 2 levels.

(3) Increase by corresponding number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) according to the loss.",

and inserting in lieu thereof the following:

"Apply § 2B1.1.".

The Commentary to § 2E5.2 captioned "Application Notes" is amended by deleting:

"1. 'More than minimal planning' is defined in the Commentary to § 1B1.1 (Application Instructions). Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)." and

"3. If the adjustment for a fiduciary obligation at § 2E5.2(b)(2) is applied, do not apply the adjustment at § 3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).",

and inserting in lieu of Note 1 the following:

"1. In the case of a defendant who had a fiduciary obligation under the Employee Retirement Income Security Act, an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) would apply.".

The Commentary to § 2E5.2 captioned "Background" is amended by deleting:

"The base offense level corresponds to the base offense level for other forms of theft. Specific offense characteristics address whether a defendant has a fiduciary relationship to the benefit plan, the sophistication of the offense, and the scale of the offense.".

Reason for Amendment: The purpose of this amendment is to simplify application of the guidelines. Related amendment: 113 (§ 2E5.4).

Additional Explanatory Statement: The offense guideline at § 2E5.2 covers theft and embezzlement from employee pension and welfare benefit plans. Basically, the guideline copies the theft guideline. However, it contains its own enhancement for an abuse of trust (§ 2E5.2(b)(2)) that is written more narrowly than the general abuse of trust provision in § 3B1.3. Commentary indicates that when this specific offense characteristic applies, § 3B1.3 is not to be applied. However, applying § 2E5.2(b)(2) for one type of abuse of trust (and then not applying § 3B1.3) and applying § 3B1.3 for all other abuse of trust appears an unnecessary complication when § 3B1.3 already includes the abuse of trust covered in § 2E5.2(b)(2). This situation may have come about simply because the guidelines in Chapter Two, Part E were written before the abuse of trust provision in § 3B1.3 was added. The same issue occurs in § 2E5.4 which covers theft and embezzlement from labor unions in the private sector.

§ 2E5.3 False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act

112. *Proposed Amendment:* § 2E5.3(a)(2) is amended by deleting "false records were used for criminal conversion of funds or a scheme" and inserting in lieu thereof "the offense was committed to facilitate or conceal a theft or embezzlement, or an offense".

The Commentary to § 2E5.3 captioned "Application Note" is amended by deleting:

"*Application Note:*

1. 'Criminal conversion' means embezzlement.".

Reason for Amendment: The purpose of this amendment is to ensure that subsection (b)(2) covers any conduct engaged in for the purpose of facilitating or concealing a theft or embezzlement, or an offense involving a bribe or gratuity.

§ 2E5.4 Embezzlement of Theft From Labor Unions in the Private Sector

113. *Proposed Amendment:* Section 2E5.4 is amended by deleting:

"(a) Base Offense Level: 4

(b) Specific Offense Characteristics

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a), increase by 2 levels.

(3) Increase by the number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) corresponding to the loss.",

and inserting in lieu thereof the following:

"Apply § 2B1.1.".

The Commentary to § 2E5.4 captioned "Application Notes" is amended by deleting

"1. 'More than minimal planning' is defined in the Commentary to § 1B1.1 (Applicable Instructions). Valuation of loss is discussed in the Commentary to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft).

2. If the adjustment for being a union officer or occupying a position of trust in a union at § 2E5.4(b)(2) is applied, do not apply the adjustment at § 3B1.3 (Abuse of a Position of Trust or Use of a Special Skill).",

and inserting in lieu thereof the following:

"1. In the case of a defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. 501(a), an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) would apply.";

and by deleting in the caption "Notes" and inserting in lieu thereof "Note".

The Commentary to § 2E5.4 captioned "Background" is amended by deleting:

"The seriousness of this offense is determined by the amount of money taken, the sophistication of the offense, and the nature of the defendant's position in the union.".

Reason for Amendment: The purpose of this amendment is to simplify application of the guidelines. Related amendment: 111 (§ 2E5.2).

Additional Explanatory Statement: See the discussion at the related amendment to § 2E5.2 (amendment 111).

§ 2E5.5 Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act

114. *Proposed Amendment:* § 2E5.5(a)(2) is amended by deleting "false records were used for criminal conversion of funds or a scheme" and inserting in lieu thereof "the offense was committed to facilitate or conceal a theft or embezzlement, or an offense".

Reason for Amendment: The purpose of this amendment is to ensure that subsection (b)(2) covers any conduct engaged in for the purpose of facilitating or concealing a theft or embezzlement, or an offense involving a bribe or gratuity.

§ 2F1.1 Fraud and Deceit

115. *Proposed Amendment:* Section 2F1.1(b)(1) is amended by deleting:

	"Loss	Increase in level
(A)	$2,000 or less	No increase.
(B)	$2,001-$5,000	Add 1.
(C)	$5,001-$10,000	Add 2.
(D)	$10,001-$20,000	Add 3.
(E)	$20,001-$50,000	Add 4.
(F)	$50,001-$100,000	Add 5.
(G)	$100,001-$200,000	Add 6.
(H)	$200,001-$500,000	Add 7.
(I)	$500,001-$1,000,000	Add 8.
(J)	$1,000,001-$2,000,000	Add 9.
(K)	$2,000,001-$5,000,000	Add 10.
(L)	Over $5,000,000	Add 11".

And inserting in lieu thereof:

	"Loss (Apply the greatest)	Increase in level
(A)	$2,000 or less	No increase.
(B)	More than $2,000	Add 1.
(C)	More than $5,000	Add 2.
(D)	More than $10,000	Add 3.
(E)	More than $20,000	Add 4.
(F)	More than $40,000	Add 5.
(G)	More than $80,000	Add 6.
(H)	More than $150,000	Add 7.
(I)	More than $300,000	Add 8.
(J)	More than $500,000	Add 9.
(K)	More than $1,000,000	Add 10.
(L)	More than $2,000,000	Add 11.
(M)	More than $5,000,000	Add 12".

Reason for Amendment: The purpose of this amendment is to conform the theft and fraud loss table to the tax loss table in order to remove an unintended inconsistency between these tables in cases where the loss is greater than $40,000. Both tables increase the offense level when the loss exceeds $2,000, but the Tax Loss Table provides a maximum 12 level difference while the Fraud Loss Table has a maximum 11 level difference. Up to $40,000 the tables are identical. Above $40,000 there are minor differences (e.g., from $40,001-$50,000

the Tax Loss Table provides a 1 level higher offense level; from $50,001–$80,000 the offense levels are identical; from $80,001 $100,000 the Tax Loss Table again provides a 1 level higher offense level; from $100,001–$150,000 the offense levels are again identical; from $150,001–$200,000 Tax Loss Table again provides a 1 level higher offense level). Because the tax loss table contains one additional level, this amendment will increase the offense level by one level in some cases. Related amendment: 32 (§ 2B1.1). This amendment also eliminates minor gaps in the loss table. Related amendments: 39 (§ 2B2.1); 47 (§ 2B3.1); 180 (§ 2R1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

116. *Proposed Amendment:* Section 2F1.1(b)(1), as amended by proposed amendment 115, is further amended by deleting:

"(G)	More than $80,000	Add 6.
(H)	More than $150,000	Add 7.
(I)	More than $300,000	Add 8.
(J)	More than $500,000	Add 9.
(K)	More than $1,000,000	Add 10.
(L)	More than $2,000,000	Add 11.
(M)	More than $5,000,000	Add 12".

And inserting in lieu thereof:

"(G)	More than $70,000	Add 6.
(H)	More than $120,000	Add 7.
(I)	More than $200,000	Add 8.
(J)	More than $350,000	Add 9.
(K)	More than $500,000	Add 10.
(L)	More than $800,000	Add 11.
(M)	More than $1,500,000	Add 12.
(N)	More than $2,500,000	Add 13.
(O)	More than $5,000,000	Add 14".

Reason for Amendment: The purpose of this amendment is to increase the offense levels for offenses with larger loss values to better reflect the seriousness of the conduct. Related amendments: 33 (§ 2B1.1); 210 (§ 2T4.1); 39 (§ 2B2.1); 48 (§ 2B3.1).

117. *Proposed Amendment:* Section 2F1.1(b)(2) is amended by inserting "subdivision (C) or (D) applies and" immediately before "the result".

The Commentary to § 2F1.1 captioned "Background" is amended in the fourth sentence of the third paragraph by deleting "not only", and by deleting ", but also specifies that the minimum offense level in such cases shall be 10."

Reason for Amendment: The purpose of this amendment is to limit the applicability of the minimum offense level of 10 in specific offense characteristic (b)(2) to cases under subdivision (c) or (d).

Additional Explanatory Statement: Under § 2F1.1 there is a two level adjustment for more than minimal planning (§ 2F1.1(b)(2)(A)) or a scheme to defraud more than one victim (§ 2F1.1(b)(2)(B)), but if the resulting offense level is less than 10, the offense level is increased to 10. The comparable adjustment from § 2B1.1 is also 2 levels but no minimum level of 10 is specified. Because there is substantial overlap in the conduct covered by the forgery/fraud guideline (§ 2F1.1) on the one hand and the theft/embezzlement guideline (§ 2B1.1) on the other (e.g., mail theft generally involves the theft of checks which are then forged), this difference may result in significant anomalies due to charging decisions unrelated to the conduct or culpability of the offender. Furthermore, this offense level produces a result that is anomalous with the counterfeiting guidelines (§§ 2B5.1 and 5.2) in that passing less than $2,000 in counterfeit bills over a period of time results in an offense level of 9 under § 2B5.1, but passing several forged checks of less than $2,000 over the same period of time produces an offense level of 10 under § 2B5.2 because of the reference to § 2F1.1. The original reason for inserting the minimum level of 10 in 2F1.1 was that FPSSIS data showed an increased level for cases with more than minimal planning but no specified loss. This, however, has been addressed by the Commission's having adopted a definition of loss that includes intended loss (FPSSIS data included only actual loss). The proposed amendment conforms the "more than minimal planning" adjustment in fraud (§ 2F1.1) and theft (§ 2B1.1).

118. *Proposed Amendment:* The Commentary to § 2F1.1 captioned "Application Notes" is amended beginning in Note 14 by deleting:

"In such instances, although § 2F1.1 applies, a departure may be warranted.

15. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state law arson where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. In such cases the most analogous guideline (in the above case, § 2K1.4) is to be applied.",

and by inserting at the end of Note 14:

"In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses. For example, a state law arson where a fraudulent insurance claim was mailed might be prosecuted as mail fraud. Where the indictment or information setting forth the count of conviction (or a stipulation as described in § 1B1.2(a)) establishes an offense more aptly covered by another guideline, apply that guideline rather than § 2F1.1. Otherwise, in such cases, § 2F1.1 is to be applied, but a departure from the guidelines may be considered.".

Reason for Amendment: The purpose of this amendment is to ensure that this guideline is interpreted in a manner consistent with § 1B1.2.

119. *Issues Related to Specific Forms of Fraud:* Congress has recently passed the Major Fraud Act of 1988 and the Insider Trading and Securities Fraud Enforcement Act of 1988. Section 2(b) of the Major Fraud Act of 1988 (pertaining to certain large scale procurement frauds against the government) requires that the Commission promulgate a new guideline or amend an existing guideline to provide an enhanced penalty "where conscious or reckless risk of serious personal injury resulting from the fraud has occurred" and that the Commission consider the appropriateness of assigning a 2-level enhancement in such cases. The Commission seeks comment on the most appropriate way of responding to this instruction. For example, should the Commission provide an enhancement only for the cases covered by the Major Fraud Act or should the Commission provide such an enhancement for all types of fraud? Should a specific offense characteristic also provide a minimum offense level (i.e., an offense level of not less than) to address cases in which a risk of serious injury was created but there was no monetary loss or little monetary loss.

Both the Major Fraud Act of 1988 and the Insider Trading and Securities Fraud Enforcement Act of 1988 provide a maximum penalty of ten years' imprisonment. The Commission seeks comment on whether these should be a higher offense level for insider trading or procurement fraud than for other frauds. Similarly, should there be a higher offense level for fraud involving a federally chartered or insured financial institution? Or, should additional levels for monetary loss be added instead to the loss table for such offenses to take into account the greater losses that are associated with such offenses? If so, what additional distinctions are appropriate? Presently, losses substantially in excess of $5 million are addressed as a departure consideration in Application Note 10 of the Commentary to § 2F1.1. Another way to respond, for example, would be to add additional levels to the loss table in § 2F1.1 (as amended by proposed amendments 115 and 116). For example, under the mathematical progression used in the guidelines, the guidelines could be amended to add 15 levels for frauds of more than $10 million, and 16

levels for frauds of more than $20 million.

A related issue is whether the loss table in § 2F1.1 (as amended by proposed amendments 115 and 116) provides the appropriate adjustment for monetary loss or whether it should be revised in some other way (upward or downward).

The Commission also seeks comment on whether the specific offense characteristic at § 2F1.1(b)(3) (pertaining to the use of foreign bank accounts or transactions to conceal the nature or extent of the offense) should also be applied to § 2F1.2 (Insider Trading), and on whether additional modifications to the guidelines are appropriate to respond to the above noted legislation.

§ 2G1.1 Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct.

120. *Proposed Amendment:* Section 2G1.1(b)(1) is amended by deleting "defendant used" and inserting in lieu thereof "offense involved the use of", and by deleting "drugs or otherwise" and inserting in lieu thereof "threats or drugs or in any manner".

The Commentary to § 2G1.1 captioned "Application Notes" is amended in Note 2 by deleting "by drugs or otherwise," immediately following "coercion".

Reason for Amendment: The purpose of this amendment is to clarify the guideline and commentary.

121. Proposed Amendment: Section 2G1.1 is amended by inserting the following additional subsection:

"(c) Special Instruction.

(1) If the offense involves the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction.".

Reason for Amendment: The purpose of this amendment is to provide a special instruction for the application of the multiple count rule in cases involving the transportation of more than one person. Related amendment: 123 (§ 2G1.2).

§ 2G1.2 Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct.

122. *Proposed Amendment:* Section 2G1.2(b)(1) is amended by deleting "drugs or otherwise" and inserting in lieu thereof "threats or drugs or in any manner".

Section 2G1.2(b)(2) and (3) is amended by deleting "conduct" whenever it appears and inserting in lieu thereof in each instance "offense".

The Commentary to § 2G1.2 captioned "Application Notes" is amended in Note 2 by deleting "by drugs or otherwise" immediately following "coercion".

Reason for Amendment: The purpose of this amendment is to clarify the guideline and Commentary.

123. *Proposed Amendment:* Section 2Gl.2 is amended by inserting the following additional subsection:

"(c) Special Instruction.

(1) If the offense involves the transportation of more than one person, Chapter Three, Part D (Multiple Counts) shall be applied as if the transportation of each person had been contained in a separate count of conviction.".

Reason for Amendment: The purpose of this amendment is to provide a special instruction for the application of the multiple count rule in cases involving the transportation of more than one person. Related amendment: 121 (§ 2G1.1).

§ 2G2.1 Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material.

124. *Proposed Amendment:* The Commentary to § 2G2.1 captioned "Application Notes" is amended in Note 1 by deleting ", distinct offense, even if several are exploited simultaneously" and inserting in lieu thereof "victim. Consequently, multiple counts involving the exploitation of different minors are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts).".

Reason for Amendment: The purpose of this amendment is to clarify that multiple counts involving different minors are not grouped under § 3D1.2.

§ 2G2.3 Selling or Buying of Children for Use in the Production of Pornography

125. *Proposed Amendment:* Chapter Two, Part G, is amended by inserting as an additional guideline:

"§ 2G2.3. Selling or Buying of Children for Use in the Production of Pornography

(a) Base Offense Level: [37][38]

Commentary

Statutory Provision: 18 U.S.C. 2251A.

Background: The statutory minimum sentence for a defendant convicted under 18 U.S.C. 2251A is twenty years imprisonment.".

Reason for Amendment: The purpose of this amendment is to create a guideline covering the new offense in section 7512 of the Omnibus Anti-Drug Abuse Act of 1988. Additional Explanatory Statement: The Commission seeks public comment on whether the offense level for this new guideline should be 37 or 38.

§ 2G3.1 Importing, Mailing, or Transporting Obscene Matter

126. *Proposed Amendment:* Section 2G3.1 is amended by deleting:

"§ 2G3.1. Importing, Mailing, or Transporting Obscene Matter

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the offense involved an act related to distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(2) If the offense involved material that portrays sadomasochistic conduct or other depictions of violence, increase by 4 levels.

(c) Cross Reference.

(1) If the offense involved a criminal enterprise, apply the appropriate guideline from Chapter Two, Part E (Offenses Involving Criminal Enterprises and Racketeering) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 1461–1465.

Application Note: 1. "Act related to distribution" as used in this guideline is to be construed broadly and includes production, transportation, and possession with intent to distribute.",

and inserting in lieu thereof:

"§ 2G3.1 Importing, Transporting, Mailing, or Distributing (Including Possessing With Intent to Distribute) Obscene Matter.

Base Offense Level: 6.

Specific Offense Characteristics: (1) If the defendant was engaged in the business of selling or distributing obscene matter, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.

(2) If the defendant distributed or possessed with intent to distribute material that portrays sadomasochistic or other violent conduct, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1460–1463, 1465–1466.

Application Note: 1. "Engaged in the business of selling or distributing obscene matter" means that the person who sells or distributes or offers to sell or distribute obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or distributing or offering to sell or distribute such material be the person's sole or principal business or source of income. See 18 U.S.C. 1466.".

Reason for Amendment: The purpose of this amendment is to incorporate the new offenses created by sections 7521 and 7526 of the Omnibus Anti-Drug Abuse Act of 1988, to delete an inapt cross reference, and to make clarifying changes.

§ 2G3.2 Obscene or Indecent Telephone Communications

127. *Proposed Amendment:* Section 2G3.2 and the Commentary thereto are amended by deleting the entire text thereof, including the title, as follows:

"§ 2G3.2. Obscene or Indecent Telephone Communications

(a) Base Offense Level: 6.

Commentary

Statutory Provision: 47 U.S.C. 223.

Background: This offense is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months.",

and inserting in lieu thereof:

"§ 2G3.2 Obscene Telephone Communications for a Commercial Purpose

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the offense involved material that describes sadomasochistic or other violent conduct, increase by 4 levels.

(2) If a person who received the communication was less than 18 years of age, increase by 2 levels unless the defendant took reasonable action to prevent access by persons less than 18 years of age or relied on such action by a telephone company.

Commentary

Statutory Provision: 47 U.S.C. 223(b)(1)(A).

Application Note: 1. 'Reasonable action to prevent access by persons less than 18 years of age' would include, for example, requiring payment by credit card before transmission of the message, requiring use of an access code before transmission of the message, or scrambling the messages so that they can be received intelligibly only by using a descrambling device. See Carlin Communications, Inc. v. Federal Communications Commission, 837 F.2d 546 (2d Cir. 1988).

Background: This offense is a felony for which the maximum term of imprisonment authorized by statute is two years.".

Reason for Amendment: The purpose of this amendment is to delete a petty offense no longer covered by the guidelines (Related amendment: 15 (§ 1B1.9)), and to insert a guideline for a felony created by section 7524 of the Omnibus Anti-Drug Abuse Act of 1988.

* * * * *

§ 2G3.3 Broadcasting Obscene Material.

128. *Proposed Amendment:* Chapter Two, Part G is amended by inserting as an additional guideline:

"§ 2G3.3 Broadcasting Obscene Material

(a) Base Offense Level: 6

(b) Specific Offense Characteristic:

(1) If the offense involved the broadcast of material that portrays sadomasochistic or other violent conduct, increase by 4 levels.

Commentary

Statutory Provisions: 18 U.S.C. 1464, 1468.".

Reason for Amendment: The purpose of this amendment is to create a guideline corresponding to the new offense in section 7523 of the Omnibus Anti-Drug Abuse Act of 1988.

§ 2H1.3 Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination.

129. *Proposed Amendment:* The title to § 2H1.3 is amended by adding at the end "; Damage to Religious Real Property".

The Commentary to § 2H1.3 is amended by deleting "18 U.S.C. 245" and inserting in lieu thereof "18 U.S.C. 245, 247".

Reason for Amendment: The purpose of this amendment is to include a recently enacted offense (18 U.S.C. 247) expressly in the title of this guideline.

Additional Explanatory Statement: This amendment revises the title of § 2H1.3 and the statutory provisions to include a new offense (18 U.S.C. 247) prohibiting the obstruction, by force or threat of force, of an individual's right to the free exercise of religion; and prohibiting the destruction of religious real property. The offense and statutory penalties are comparable to those offenses covered by the current § 2H1.3.

§ 2H1.4 Interference With Civil Rights Under Color of Law

130. *Proposed Amendment:* Section 2H1.4(a)(2) is amended by deleting "2 plus" and inserting in lieu thereof "6 plus".

The Commentary to § 2H1.4 captioned "Application Notes" is amended in Note 1 by deleting "2 plus" and inserting in lieu thereof "6 plus", and by deleting "is defined" and inserting in lieu thereof "means 6 levels above the offense level for any underlying criminal conduct. See the discussion".

The Commentary to § 2H1.4 captioned "Background" is amended by deleting ", except where death results, in which case the maximum term of imprisonment authorized is life imprisonment" and inserting in lieu there of "if no bodily injury results, ten years if bodily injury results, and life imprisonment if death results", by deleting "Given this one-year statutory maximum" and inserting in lieu thereof "A", by inserting "one year" immediately following "near the", and by inserting "or bodily" immediately following "resulting in death".

The Commentary to § 2H1.4 captioned "Background" is amended by inserting at the end of the first paragraph:

"The 6-level increase under subsection (a)(2) reflects the 2-level increase that is applied to other offenses covered in this Part plus a 4-level increase for the commission of the offense under actual or purported legal authority. This 4-level increase is inherent in the base offense level of 10 under subsection (a)(1).".

Reason for Amendment: The proposed amendment corrects an anomaly between the offense level under this section and § 2H1.5 when the offense level is determined under subsection (a)(2).

Additional Explanatory Statement: Section 2H1.4 is similar to § 2H1.5 in that it may or may not involve the use of force. Under § 2H1.4, however, the offense must involve the abuse of actual or purported legal authority. The base offense level of 10 used in § 2H1.4(a)(1) has a built-in 4-level enhancement (which corresponds to the base offense level of 6 under § 2H1.5(a)(1) plus the 4-level increase for a public official). There is an anomaly, however, when the base offense level from (a)(2) is used. In such cases, § 2H1.4 results in an offense level that is 4 levels less than § 2H1.5 when the offense is committed by a public official. The proposed amendment recommended addresses this issue. The proposed amendment also amends the Commentary to § 2H1.4 to reflect the recent increase in the maximum authorized sentence from one to ten years when bodily injury results.

§ 2H1.5 Other Deprivations of Rights or Benefits in Furtherance of Discrimination

131. *Proposed Amendment:* The Commentary to § 2H1.5 captioned "Application Notes" is amended in Note 2 by deleting "§ 2H1.4(b)(1)" and inserting in lieu thereof "§ 2H1.5(b)(1)". Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 2H2.1 Obstructing an Election or Registration

132. *Proposed Amendment:* Section 2H2.1(a)(1) is amended by deleting "persons" and inserting in lieu thereof "person(s)".

The Commentary to § 2H2.1 captioned "Background" is amended by deleting "Specific offense characteristics" and inserting in lieu thereof "Alternative base offense levels".

Reason for Amendment: The purpose of this amendment is to correct two clerical errors. First, the use of the plural "persons" in current subsection (a)(1)

could be read to mean this subsection does not apply if the force or threat was applied only to one person, a result that was not intended. Second, the reference to "Specific offense characteristics" in the current Background is inaccurate; it should read "Alternative base offense levels".

§ 2H3.1 Interception of Communications or Eavesdropping

133. *Proposed Amendment:* Section 2H3.1 is amended by deleting:

"(a) Base Offense Level (Apply the greater):

(1) 9; or

(2) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense.

(b) Specific Offense Characteristic.

(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain not covered by § 2H3.1(a)(2) above, increase by 3 levels.",

and inserting in lieu thereof:

"(a) Base Offense Level: 9.

(b) Specific Offense Characteristic.

(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain, increase by 3 levels.

(c) Cross Reference.

(1) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense, if the resulting offense level is greater than that determined above.".

Reason for Amendment: This amendment corrects an anomaly in § 2H3.1. Currently, specific offense characteristic (b)(1) applies only to base offense level (a)(1). Consequently, conduct facilitating an offense for economic gain of level 8 or 9 would result in a greater offense level (11 or 12) than conduct facilitating a more serious (level 10 or 11) offense.

§ 2J1.1 Contempt

134. *Proposed Amendment:* Section 2J1.1 is amended by deleting: "If the defendant was adjudged guilty of contempt, the court shall impose a sentence based on stated reasons and the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2).",

and inserting in lieu thereof:

"Apply § 2X5.1 (Other Offenses).".

The Commentary to § 2J1.1 captioned "Application Note" is amended in Note 1 by deleting "See, however, § 2X5.1 (Other Offenses)." and inserting in lieu thereof "In certain cases, the offense conduct will be sufficiently analogous to § 2J1.2 (Obstruction of Justice) for that guideline to apply.".

Reason for Amendment: This section is designated as a guideline, but it is not a guideline contemplated by the Sentencing Reform Act. This amendment clarifies the Commission's original intent by referencing this section to § 2X5.1 (Other Offenses).

135. *Proposed Amendment:* The Commentary to § 2J1.1 captioned "Statutory Provisions" is amended by deleting "Provisions" and inserting in lieu thereof "Provision", and by deleting "§" and ", 402".

Reason for Amendment: The purpose of this amendment is to delete a reference to a petty offense. Related amendment: 15 (§ 1B1.9).

§ 2J1.2 Obstruction of Justice

136. *Proposed Amendment:* Section 2J1.2(b)(1) is amended by deleting "defendant obstructed or attempted to obstruct the administration of justice by" and inserting in lieu thereof "offense involved", and by deleting "or property," and inserting in lieu thereof ", or property damage, in order to obstruct the administration of justice".

Section 2J1.2(b)(2) is amended by deleting "defendant substantially interfered" and inserting in lieu thereof "offense resulted in substantial interference".

Section 2J1.2(c)(1) is amended by deleting "conduct was" and inserting in lieu thereof "offense involved", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 1 by deleting " 'Substantially interfered" and inserting in lieu thereof " 'Substantial interference", and by deleting "offense conduct resulting in".

Reason for Amendment: The purpose of this amendment is to conform the language of the subsections and insure that an attempted obstruction is not excluded from subsection (c) because of the non-parallel language between (b)(1) and (c)(1).

137. *Proposed Amendment:* The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1505" immediately following "1503".

Reason for Amendment: The purpose of this amendment is to delete a reference to a petty offense. Related amendment: 15 (§ 1B1.9).

138. *Proposed Amendment:* The Commentary to § 2J1.2 captioned "Statutory Provisions" is amended by inserting ", 1516" immediately following "1513".

Reason for Amendment: The purpose of this amendment is to expand the coverage of an existing guideline to include a new offense (Obstruction of a Federal Audit) created by section 7078 of the Omnibus Anti-Drug Abuse Act of 1988.

§ 2J1.3 Perjury

139. *Proposed Amendment:* Section 2J1.3 is amended in the caption by inserting "or Subornation of Perjury" immediately following "Perjury".

Section 2J1.3(b)(1) is amended by deleting "defendant suborned perjury by" and inserting in lieu thereof "offense involved", and by deleting "or property" and inserting in lieu thereof ", or property damage, in order to suborn perjury".

Section 2J1.3(b)(2) is amended by deleting "defendant's", and by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

Section 2J1.3(c)(1) is amended by deleting "conduct was perjury" and inserting in lieu thereof "offense involved perjury or subornation of perjury", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.3 captioned "Application Notes" is amended in Note 1 by deleting " 'Substantially interfered" and inserting in lieu thereof " 'Substantial interference", and by deleting "offense conduct resulting in".

Reason for Amendment: The purposes of this amendment are to clarify the guideline, and to ensure that subornation of perjury is not excluded from subsection (c) due to a lack of parallel wording in the subsections.

§ 2J1.4 Impersonation.

140. *Proposed Amendment:* Section 2J1.4(b)(1) is amended by deleting:

"If the defendant falsely represented himself as a federal officer, agent or employee to demand or obtain any money, paper, document, or other thing of value or to conduct an unlawful arrest or search, increase by 6 levels.",

and inserting in lieu thereof:

"If the impersonation was committed for the purpose of conducting an unlawful arrest, detention, or search, increase by 6 levels.".

Section 2J1.4 is amended by inserting the following additional subsection:

(c) Cross Reference. (1) If the impersonation was to facilitate another offense, apply the guideline for an attempt to commit that offense, if the resulting offense level is greater than the offense level determined above.".

Reason for Amendment: The purpose of this amendment is to relate the offense levels more directly to the underlying offense where the impersonation is committed for the purpose of facilitating another offense.

Additional Explanatory Statement: The statutes covered by § 2J1.4 are sometimes used as jurisdictional statutes to prosecute fraud or forgery cases where the defendant pretends to be a federal employee (showing false or stolen federal identification) to cash a check. The current guideline will produce a result lower than the fraud/forgery guideline if the amount is extremely large and higher than that guideline if the amount is small. This result seems anomalous, particularly as the statutory maximum for the offenses covered by § 2J1.4 is only 3 years, lower than that generally provided in fraud/forgery statutes.

In addition, the proposed amendment deletes unnecessary and technically inaccurate language.

§ 2J1.5 Failure to Appear by Material Witness.

141. *Proposed Amendment:* Section 2J1.5(b)(1) is amended by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

The Commentary to § 2J1.5 captioned "Application Notes" is amended in Note 1 by deleting "'Substantially interfered" and inserting in lieu thereof "'Substantial interference", and by deleting "offense conduct resulting in".

Reason for Amendment: The purpose of this amendment is to clarify the intent of the guideline.

§ 2J1.7 Commission of Offense While on Release.

142. *Proposed Amendment:* Section 2J1.7 is amended by deleting:

"§ 2J1.7. Commission of Offense While on Release

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics

(1) If the offense committed while on release is punishable by death or imprisonment for a term of fifteen years or more, increase by 6 levels.

(2) If the offense committed while on release is punishable by a term of imprisonment of five or more years, but less than fifteen years, increase by 4 levels.

(3) If the offense committed while on release is a felony punishable by a maximum term of less than five years, increase by 2 levels.

Commentary

Statutory Provision: 18 U.S.C. 3147. *Application Notes:* 1. This guideline applies whenever a sentence pursuant to 18 U.S.C. 3147 is imposed.

2. By statute, a term of imprisonment imposed for a violation of 18 U.S.C. 3147 runs consecutively to any other term of imprisonment. Consequently, a sentence for such a violation is exempt from grouping under the multiple count rules. See § 3D1.2.

Background: Because defendants convicted under this section will generally have a prior criminal history, the guideline sentences provided are greater than they otherwise might appear.",

and inserting in lieu thereof:

"§ 2J1.7 Commission of Offense While on Release.

If an enhancement under 18 U.S.C. 3147 applies, add [2][3][4] levels to the offense level for the offense committed while on release as if this section were a specific offense characteristic contained in the offense guideline for the offense committed while on release.

Commentary

Statutory Provision: 18 U.S.C. 3147.

Application Notes: 1. Because 18 U.S.C. 3147 is an enhancement provision, rather than an offense, this section provides a specific offense characteristic to increase the offense level for the offense committed while on release.

2. Under 18 U.S.C. 3147, a sentence of imprisonment must be imposed in addition to the sentence for the underlying offense, and the sentence of imprisonment imposed under 18 U.S.C. 3147 must run consecutively to any other sentence of imprisonment. In order to avoid 'double counting', the court will have to ensure that the 'total punishment' (i.e., the sentence for the offense committed while on release plus the sentence enhancement under 18 U.S.C. 3147) is in accord with the guideline range for the offense committed while on release, as adjusted by the enhancement in this section. e.g., if the applicable guideline range is 30–37 months and the court determines 'total punishment' of 36 months is appropriate, a sentence of 30 months for the underlying offense plus 6 months under 18 U.S.C. 3147 would satisfy this requirement.

Background: An enhancement under 18 U.S.C. 3147 may be imposed only upon application of the government; it cannot be imposed on the court's own motion. In this respect, it is similar to a separate count of conviction and, for this reason, is placed in Chapter Two of the guidelines.

Legislative history indicates that, the mandatory nature of the penalties required by 18 U.S.C. 3147 was to be eliminated upon the implementation of the sentencing guidelines. 'Section 213(h) [renumbered as section 200(g) in the Crime Control Act of 1984] amends the new provision in title I of this Act relating to consecutive enhanced penalties for committing an offense on release (new 18 U.S.C. 3147) by eliminating the mandatory nature of the penalties in favor of utilizing sentencing guidelines.' (Senate Report 98–225 at 186). Not all of the phraseology relating to the requirement of a mandatory sentence, however, was actually deleted from the statute. Consequently, it appears the court is required to impose a consecutive sentence of imprisonment under this provision, but there is no requirement as to any minimum term. This guideline is drafted to enable the court to determine and implement a combined 'total punishment' consistent with the overall structure of the guidelines, while at the same time complying with the statutory requirement. Guideline provisions that prohibit the grouping of counts of conviction requiring consecutive sentences (e.g., the introductory paragraph of § 3D1.2; § 5G1.2(a)) do not apply to this section because 18 U.S.C. 3147 is an enhancement, not a count of conviction.".

Reason for Amendment: The purpose of this amendment is to reflect the fact that 18 U.S.C. 3147 is an enhancement provision, not a distinct offense.

Additional Explanatory Statement: During the development of the original set of guidelines, there was some confusion as to whether 18 U.S.C. 3147 was a criminal offense or an enhancement provision. It turns out it is an enhancement provision. To complicate matters, the statute and legislative history do not match exactly. Created in 1984 as part of the Comprehensive Crime Control Act, the statute contained interim provisions (mandatory consecutive sentences that were subject to the parole and good time provisions of prior law) that were to be in effect until the sentencing guidelines took effect. The Senate Report to S.1762 indicates that the mandatory nature of the interim provisions was to be eliminated when the sentencing guidelines took effect ("Section 213(h) [section 220(g) of the CCCA of 1984] amends the new provision in title I of this Act relating to consecutive enhanced penalties for committing an offense while on release (new 18 U.S.C. 3147)] by eliminating the mandatory nature of the penalties in favor of utilizing sentencing guidelines" (Senate Report 98–225 at 186). The statute, as amended, however, did not actually eliminate all language referring to mandatory penalties. A mandatory consecutive term of imprisonment is required but, unlike other mandatory provisions, there is no minimum required. Consequently, no real restriction is placed on the court; i.e., a consecutive sentence of 1 day's imprisonment is not prohibited.

The Commission attempted to deal with the mandatory consecutive requirement of this provision by treating it as if it constituted a separate offense, but this treatment has caused several problems.

Treating this provision as if it were a separate offense engenders a variety of questions, including whether and how victim adjustments, obstruction, and acceptance of responsibility apply to this provision, whether a term of supervised release can be imposed if no term of imprisonment is imposed on the underlying offense, whether a fine can be imposed; and how the cost of supervision on the consecutive part of

the term is to be considered. Moreover, while other enhancements vary with the offense level for the underlying offense, this enhancement varies with the much cruder measure of the statutory maximum penalty for the underlying offense (e.g., under the current guideline, possessing a counterfeit ten dollar bill would result in a greater enhancement than interstate or foreign travel or transportation in aid of racketeering activity).

The amendment recommended below converts this section into an offense level adjustment for the offense committed while on release, a treatment that is considerably more consistent with the treatment of other offense/offender characteristics.

The Commission seeks public comment as to whether 2, 3, or 4 level enhancement is appropriate.

§ 2J1.8 Bribery of a Witness

143. *Proposed Amendment:* Section 2J1.8(b)(1) is amended by deleting "substantially interfered" and inserting in lieu thereof "resulted in substantial interference".

Section 2J1.8(c)(1) is amended by deleting "conduct was" and inserting in lieu thereof "offense involved", and by deleting "such" and inserting in lieu thereof "that".

The Commentary to § 2J1.8 captioned "Application Notes" is amended in Note 1 by deleting "Substantially interfered" and inserting in lieu thereof "Substantial interference", and by deleting "offense conduct resulting in".

The Commentary to § 2J1.8 captioned "Application Notes" is amended in Note 2 by deleting "This section applies only in the case of a conviction under the above referenced (or equivalent) statute." immediately before "For offenses".

Reason for Amendment: The purposes of this amendment are to clarify the guideline and to delete surplus language in the Commentary. Retention of this surplus language could create the impression that a different result was intended in other similar guidelines not containing such language.

§ 2J1.9 Payment to Witness

144. *Proposed Amendment:* Section 2J1.9(b)(1) is amended by deleting "for refusing to testify" and inserting in lieu thereof "made or offered for refusing to testify or for the witness absenting himself to avoid testifying".

The Commentary to § 2J1.9 captioned "Application Notes" is amended by deleting:

"1. 'Refusing to testify' includes absenting oneself for the purpose of avoiding testifying.",

and by renumbering Notes 2 and 3 as 1 and 2 respectively.

Reason for Amendment: The purpose of this amendment is to move material from the Commentary to the guideline itself where it more properly belongs.

145. *Proposed Amendment:* The Commentary to § 2J1.9 captioned Application Notes is amended in the renumbered Note 1 by deleting "This section applies only in the case of a conviction under the above referenced (or equivalent) statute." immediately before "For offenses".

Reason for Amendment: The purpose of this amendment is to delete surplus language from the Commentary. Retention of this surplus language could create the impression that a different result was intended in other similar guidelines not containing this language.

Chapter Two, Part K, Offenses Involving Public Safety

146. *Proposed Amendment:* Sections 2K1.4(c), 2K1.5(c), 2K2.1(c), 2K2.2(c), and 2K2.3(c) are amended by deleting "higher" whenever it appears and inserting in lieu thereof "greater".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 2K1.3 Unlawfully Trafficking In, Receiving, or Transporting Explosives

147. *Proposed Amendment:* Section 2K1.3(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

Section 2K1.3(b)(5) is amended by deleting "firearm offense" and inserting in lieu thereof "offense involving explosives".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

§ 2K1.4 Arson: Property Damage By Use of Explosives

148. *Proposed Amendment:* Section 2K1.4(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

149. *Proposed Amendment:* Section 2K1.4 is amended by inserting as an additional subsection the following:

"(d) Note: The specific offense characteristic in subsection (b)(4) applies only in the case of an offense committed prior to November 18, 1988.";

The Commentary to § 2K1.4 captioned "Statutory Provisions" is amended by inserting "(only in the case of an offense committed prior to November 18, 1988)" immediately following "(h)";

The Commentary to § 2K1.4 captioned "Background", is amended by deleting "used fire or an explosive in the commission of a felony," and by inserting at the end of the paragraph the following new sentence: "As amended by section 6474(b) of the Omnibus Anti-Drug Abuse Act of 1988 (effective November 18, 1988), 18 U.S.C. 844(h) sets forth a mandatory sentencing enhancement of five years for the first offense and ten years for subsequent offenses if the defendant was convicted of using fire or an explosive to commit a felony or of carrying an explosive during the commission of a felony. See § 2K1.7.

Reason for Amendment: The purpose of this amendment is to conform the guidelines to a statutory revision to 18 U.S.C. 844(h). Related amendments: 152 (§ 2K1.7); 286 (Appendix A).

§ 2K1.5 Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft

150. *Proposed Amendment:* Section 2K1.5(b) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

151. *Proposed Amendment:* Section 2K1.5(b)(1) is amended by deleting "(i.e., the defendant is convicted under 49 U.S.C. 1472(1)(2)", and by inserting "is convicted under 49 U.S.C. 1472(1)(2) (i.e., the defendant" immediately before "acted".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

152. *Proposed Amendment:* Chapter Two, Part K is amended by inserting as an additional guideline the following:

"§ 2K1.7 Use of Fire or Explosive to Commit a Federal Felony

If the defendant, whether or not convicted of another crime, was convicted under 18 U.S.C. 844(h), the term of imprisonment is that required by statute.

Commentary

Statutory Provision: 18 U.S.C. 844(h).

Application Notes:

1. The statute requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

2. Imposition of a term of supervised release is governed by the provisions of § 5D1.1 (Imposition of a Term of Supervised Release).".

Reason for Amendment: The purpose of this amendment is to conform the guidelines to a statutory revision of the meaning of 18 U.S.C. 844(h). Related

amendments: 149 (§ 2K1.4); 186 (Appendix A).

Chapter Two, Part K, Subpart 1

153. Section 6474(a) of the Omnibus Anti-Drug Abuse Act of 1988: Section 6474(a) of the Omnibus Anti-Drug Abuse Act of 1988 increases the statutory maximum sentence for possession of an explosive in a federal building (18 U.S.C. 844(g)) from one to five years and expands coverage of the offense to include an airport that is subject to the regulatory authority of the Federal Aviation Administration. Currently, there is no guideline for 18 U.S.C. 844(g). The Commission intends to promulgate a guideline to cover this offense and seeks comment on the appropriate base offense level and specific offense characteristics for this guideline.

Chapter Two Part K, Subpart 2

154. *Revision of Chapter Two, Part K, Subpart 2:* The Commission seeks comment on a revision of Chapter Two, Part K, Subpart 2, to address a number of diverse substantive and technical issues, as well as the creation of several new offenses, and increased statutory maximum penalties for certain other offenses. Various issues concerning the current guidelines are discussed and an example of an approach to address these issues is shown in amendment form. The Commission seeks comment on this apporach as well as any recommendations for alternative approaches to address these issues.

A significant problem with the present guideline is that there are a large number of overlapping statutory provisions so that the three basic guidelines, § 2K2.1 (Possession by a prohibited person), § 2K2.2 (Possession of certain types of weapons), and § 2K2.3 (Unlawful trafficking), are not closely tied to the actual conduct. For example, possession of a machine gun might be prosecuted under 18 U.S.C. 922(o) or 26 U.S.C. 5861(a). Prosecution under the first listed statute results in an offense level of 6; prosecution under the second results in an offense level of 12. In other cases, offenses involving trafficking in multiple firearms are referenced by the offense of conviction to § 2K2.1 or § 2K2.2 where there is no table to take into account multiple firearms. The amendment shown below addresses this issue by consolidating the current three guidelines into two guidelines: (1) Unlawful possession, receipt, or transportation, and (2) unlawful trafficking; and by more carefully drawing the distinctions between the base offense levels provided. The third guideline shown in this amendment is a new guideline to address transfer of a weapon with intent or knowledge that it will be used to commit another offense (formerly covered in a cross reference) and a new offense added by the Omnibus Anti-Drug Abuse Act of 1988 (section 6211) (Interstate travel to acquire a firearm for a criminal purpose).

In addition, it is not clear that "used" in the cross-reference in § 2K2.1 will be consistently read as including "possessed in connection with". The amendment shown below addresses this issue. Other cross-references are provided to ensure that if both the amended §§ 2K2.1 and 2K2.2 are applicable, the guideline having the greater offense level will apply.

The current guideline uses the term "Firearms or Other Weapons" because the term "firearm" used in the underlying statutes is broader than the usual definition of firearm found in § 1B1.1. However, the undefined term "other weapons" is confusing, and ammunition, which is covered by the statute, is omitted from the guideline title. The amendment shown below uses the term "Firearms or Ammunition" in § 2K2.1 and provides an Application Note in both § 2K2.1 and § 2K2.2 to indicate that the definition of firearm is different from that used in the general definitions in § 1B1.1.

The base offense level for conduct covered by the current § 2K2.1 is increased in the amendment shown below from 9 to 12 (the same base offense level as the current § 2K2.2). The statutorily authorized maximum sentence for the conduct covered under § 2K2.1 was increased from five to ten years by the Omnibus Anti-Drug Abuse Act of 1988 (section 6462). Note, however, that the most aggravated conduct under § 2K2.1 (possession of a weapon during commission of another offense) is handled by the cross-reference at subsection (c) and is based upon the offense level for an attempt to commit the underlying offense. See Background Commentary to current § 2K2.1. In addition, the amendment shown below raises the enhancement for stolen weapons or obliterated serial numbers from 1 to 2 levels to better reflect the seriousness of this conduct. The numbers currently used in the table for the distribution of multiple weapons in § 2K2.2 are shown [Option 1] as well as an option that would increase the offense level increases somewhat more rapidly for sale of multiple weapons [Option 2]. The example shown below retains the offense level of 12 for unlawful possession of a machine gun, sawed off shotgun, or destructive device; and level 16 for a firearm silencer or muffler. All of these weapons are prohibited under 18 U.S.C. 5861. Comment is sought as to whether the Commission should provide the same offense level for all such weapons, and if so, a recommendation as to the appropriate offense level.

Section 2K2.1 and accompanying Commentary, except for Commentary captioned "Background", are deleted and the following inserted in lieu thereof:

"§ 2K2.1 Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition

(a) Base Offense Level (Apply the Greater). (1) 12, if the defendant is convicted under 18 U.S.C. 922 (g), (h), (n), or (o), or 26 U.S.C. 5861; or if the defendant, at the time of the offense, had been convicted in any court of an offense punishable by imprisonment for a term exceeding one year; or

(2) 6, otherwise.

(b) Specific Offense Characteristics.

(1) If the defendant obtained or possessed the firearm or ammunition solely for lawful sporting purposes or collection, reduce the offense level determined above to level 6;

(2) If the firearm was stolen or had an altered or obliterated serial number, increase by 2 levels;

(3) If the offense involved a firearm silencer or firearm muffler, increase by 4 levels.

(c) Cross References.

(1) If the offense involved the distribution of a firearm or possession with intent to distribute, apply § 2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving a Firearm) if the resulting offense level is greater than that determined above;

(2) If the defendant used or possessed the firearm in connection with commission or attempted commission of another offense, apply § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above.

Statutory Provisions: 18 U.S.C. 922 (a)(1), (a)(3), (a)(4), (a)(6), (e), (f), (g), (h), (i), (j), (k), (l), (n), and (o); 26 U.S.C. 5861 (b), (c), (d), (h), (i), (j), and (k).

Application Notes:

1. The definition of 'firearm' used in this section is that set forth in 18 U.S.C. 921(a)(3) (if the defendant is convicted under 18 U.S.C. 922) and 26 U.S.C. 5845(a) (if the defendant is convicted under 26 U.S.C. 5861). These definitions are somewhat broader than that used in Application Note 1(e) of the Commentary to § 1B1.1 (Application Instructions). Under 18 U.S.C. 921(a)(3), the term 'firearm' means (A) any weapon (including a starter gun) which will or is

designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Under 26 U.S.C. 5845(a), the term 'firearm' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or weapon from a rifle, with a barrel or barrels less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain other large bore weapons.

2. Under § 2K2.1(b)(1), intended lawful use, as determined by the surrounding circumstances, provides a decrease in offense level. Relevant circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the nature of the defendant's criminal history (e.g., whether involving firearms), and the extent to which possession was restricted by local law.".

Sections 2K2.2 and 2K2.3, including titles and accompanying Commentary, are deleted in their entirety and the following substituted in lieu thereof:

"§ 2K2.2 Unlawful Trafficking and Other Prohibited Transactions Involving Firearms

(a) Base Offense Level (1) 12, if the defendant is convicted under 18 U.S.C. 922(o) or 26 U.S.C. 5861;

(2) 6, otherwise.

(b) Specific Offense Characteristics

(1) If the offense involved distribution of a firearm, or possession with intent to distribute, and the number of firearms unlawfully distributed, or to be distributed, exceeded [two][five], increase as follows:

	Number of firearms	Increase in level
	Option 1	
(A)	6 to 10	Add 1.
(B)	11 to 20	Add 2.
(C)	21 to 50	Add 3.
(D)	51 to 100	Add 4.
(E)	101 to 200	Add 5.
(F)	More than 200	Add 6.
	Option 2	
(A)	3 to 5	Add 2.
(B)	6 to 11	Add 3.
(C)	12 to 24	Add 4.
(D)	25 to 49	Add 5.
(E)	50 or more	Add 6.

(2) If any of the firearms was stolen or had an altered or obliterated serial number, increase by 2 levels

(3) If the offense involved a firearm silencer or firearm muffler, increase by 4 levels.

(4) If more than one of the following applies, use the greater:

(A) If the defendant is convicted under 18 U.S.C. 922(d), increase by 2 levels; or

(B) If the defendant is convicted under 18 U.S.C. 922 (b)(1) or (b)(2), increase by 1 level.

(C) Cross Reference

(1) If the defendant, at the time of the offense, had been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, apply § 2K2.1 (Unlawful Possession, Receipt, or Transportation of a Firearm or Ammunition) if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. 922 (a)(1), (a)(2), (a)(5), (b), (c), (d), (e), (f), (i), (j), (k), (l), (m), (o); 26 U.S.C. 5861 (a), (e), (f), (g), (j), and (l).

Application Notes:

1. The definition of firearm used in this section is that set forth in 18 U.S.C. 921(a)(3) (if the defendant is convicted under 18 U.S.C. 922) and 26 U.S.C. 5845(a) (if the defendant is convicted under 26 U.S.C 5861). These definitions are somewhat broader than that used in Application Note 1(e) of the Commentary to § 1B1.1 (Application Instructions). Under 18 U.S.C. 921(a)(3), the term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Under 26 U.S.C. 5845(a), the term 'firearm' includes a shotgun, or a weapon made from a shotgun, with a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun or rifle with an overall length of less than 26 inches; a rifle, or weapon from a rifle, with a barrel or barrels less than 16 inches in length; a machine gun; a muffler or silencer for a firearm; a destructive device; and certain other large bore weapons.

2. If the number of weapons involved substantially exceeded [fifty][two hundred], an upward departure may be warranted.

Background: This guideline applies to a variety of offenses involving firearms, ranging from unlawful distribution of silencers, machine guns, sawed-off shotguns and destructive devices, to essentially technical violations.".

"§ 2K2.3 Receiving, Transporting, Shipping or Transferring a Firearm or Ammunition With Intent to Commit Another Offense, or With Knowledge that It Will Be Used in Committing Another Offense

(a) Base Offense Level (Apply the Greater) (1) The offense level from § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the offense that the defendant intended or knew was to be committed with the firearm.

(2) The offense level from § 2K2.1 (Unlawful Receipt, Possession, or Transportation of a Firearm), or § 2K2.2 (Unlawful Trafficking and Other Prohibited Transactions Involving a Firearm), as applicable.

Commentary

Statutory Provisions: 18 U.S.C. 924 (b), (f), (g).".

§ 2K2.3 Prohibited Transactions in or Shipment of Firearms and Other Weapons

155. *Proposed Amendment:* Section 2K2.3(b) is amended by deleting "dealt in" and inserting in lieu thereof "involved in the offense", and by deleting "purchaser" wherever it appears and inserting in lieu thereof "recipient".

Reason for Amendment: The purpose of this amendment is to replace the awkward term "dealt in" with clearer terminology, and to clarify that application of subsection (b)(2) (A) and (B) includes "distribution" rather than only "sale".

156. *Proposed Amendment:* Section 2K2.3(b)(2) is amended by deleting "any of the following" and inserting in lieu thereof "more than one".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

§ 2K2.4 Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes

157. *Proposed Amendment:* Section 2K2.4 is amended by deleting "penalties are those" and inserting in lieu thereof "term of imprisonment is that".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by inserting the following additional Note:

"3. Imposition of a term of supervised release is governed by the provisions of § 5D1.1 (Imposition of a Term of Supervised Release).".

Section 2K2.4 is amended by inserting "(a)" immediately before "If", and by inserting as an additional subsection the following:

"(b) Special Instructions for Fines:

(1) Where there is a federal conviction for the underlying offense, the fine guideline shall be the fine guideline that would have been applicable had there only been a conviction for the underlying offense. This guideline shall be used as a consolidated fine guideline for both the underlying offense and the conviction underlying this section.".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by inserting the following as an additional Note:

"4. Subsection (b) sets forth special provisions concerning the imposition of fines. Where there is also a conviction for the underlying offense, a consolidated fine guideline is determined by the offense level that would have applied to the underlying offense absent a conviction under 18 U.S.C. 924(c) or 929(a). This is because the offense level for the underlying offense may be reduced when there is also a conviction under 18 U.S.C. 924(c) or 929(a) in that any specific offense characteristic for possession, use, or discharge of a firearm is not applied (see Application Note 2). The Commission has not established a fine guideline range for the unusual case in which there is no conviction for the underlying offense.".

Reason for Amendment: The purpose of this amendment is to address the imposition of a fine or term of supervised release when this guideline applies.

158. *Proposed Amendment:* Chapter Two, Part K is amended by adding the following new guideline and accompanying commentary:

"§ 2K2.5 Possession of Firearms and Dangerous Weapons in Federal Facilities

(a) Base Offense Level: 6

(b) Cross Reference

(1) If the defendant possessed the firearm or other dangerous weapon with intent to use it in the commission of another offense, apply § 2X1.1 (Attempt, Solicitation or Conspiracy) in respect to that other offense if the resulting offense level is greater than that determined above.

Commentary

Statutory Provision: 18 U.S.C. 930.".

Reason for Amendment: This amendment adds a guideline to cover a new offense enacted by section 6215 of the Omnibus Anti-Drug Abuse Act of 1988.

Additional Explanatory Statement: Section 6215 of the Omnibus Anti-Drug Abuse Act of 1988 creates a new offense: "Possession of firearms and dangerous weapons in Federal facilities." The offense carries a maximum penalty of one year for simple possession and five years for possession with intent to use the weapon in the commission of a crime. A federal facility is defined as a building where federal employees are regularly present for the purpose of performing their official duties.

A base offense level of 6 is provided for the misdemeanor portion of this statute. The felony portion of this statute (possession with intent to commit another offense) is treated as if an attempt to commit that other offense.

§ 2L1.1 Smuggling, Transporting, or Harboring an Unlawful Alien

159. *Proposed Amendment:* Section 2L1.1(b) is amended by inserting as a new subsection the following:

"(3) In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, if the offense level determined above is less than level 8, increase to level 8.".

The Commentary to § 2L1.1 captioned "Application Notes" is amended in Note 6 by deleting "enhancement at § 2L1.1(b)(1) does not apply" and inserting in lieu thereof "reduction at § 2L1.1(b)(1) applies".

Reason for Amendment: The purposes of this amendment are to provide an offense level that is no less than that provided under § 2L1.2 in the case of a defendant who is a previously deported alien, and to conform Application Note 6 of the Commentary to § 2L1.1 to the January 1988 revision of § 2L1.1.

§ 2L1.2 Unlawfully Entering or Remaining in the United States

160. *Aliens Previously Deported After Conviction of a Felony:* Section 7345 of the Omnibus Anti-Drug Abuse Act of 1988 provides a maximum penalty of five years' imprisonment if the defendant was deported after conviction of a felony, and a maximum term of fifteen years' imprisonment if the defendant was deported after conviction of an aggravated felony (defined as murder, any drug trafficking crime, or any illicit trafficking in firearms or destructive devices, or any attempt or conspiracy to commit any such act, committed within the United States). Otherwise, the maximum penalty is two years' imprisonment.

The Commission seeks public comment on whether and how § 2L1.2 should be amended to address the distinctions added by this statute. One way might be to add a specific offense characteristic to provide an increase in the case of an alien previously deported after conviction of a felony other than an immigration law violation, and to allow an upward departure in the case of an "aggravated felony" due to the wide range of conduct within the definition of an aggravated felony (e.g., from first degree murder to sale of a small quantity of a controlled substance). This specific offense characteristic would be in additon to, and not in lieu of, criminal history points added for the prior sentence. The issue of the appropriate enhancement for an aggravated felony would be deferred until the Commission can analyze current practice data through its case monitoring system.

For example, § 2L1.2 might be amended by inserting the following additional specific offense characteristic:

"(b) Specific Offense Characteristic

(1) If the defendant previously was deported after sustaining a conviction for a felony, other than a felony involving violation of the immigration laws, increase by [2][3][4] levels.",

and the Commentary to § 2L1.2 captioned "Application Notes" might be amended by adding the following additional Note:

"3. A [2][3][4] level increase is provided when the defendant was previously deported after sustaining a conviction for a felony, other than a felony involving a violation of the immigration laws. In the case of a defendant previously deported after sustaining conviction for an aggravated felony as defined in 8 U.S.C. 1101(a), or an offense of comparable seriousness, an upward departure should be considered.".

The Commission seeks comment on the appropriateness of an amendment such as shown above, and welcomes other proposals for addressing this issue.

§ 2L1.3 Engaging in a Pattern of Unlawful Employment of Aliens

161. *Proposed Amendment:* Section 2L1.3 and the Commentary thereto are amended by deleting the entire text thereof, including the title, as follows:

"§ 2L1.3. Engaging in a Pattern of Unlawful Employment of Aliens

(a) Base Offense Level: 6

Commentary

Statutory Provision: 8 U.S.C. 1324a(f)(1).

Background: The offense covered under this section is a misdemeanor for which the maximum term of imprisonment authorized by statute is six months.".

Reason for Amendment: The purpose of this amendment is to delete a guideline applying only to a petty offense. Petty offenses were deleted from coverage of the guidelines by the adoption of § 1B1.9 (effective June 15, 1988). Related amendment: 15 (§ 1B1.9).

§ 2L2.1 Trafficking in Evidence of Citizenship or Documents Authorizing Entry

162. *Proposed Amendment:* Section 2L2.1(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L2.1(b)(1) is amended by deleting "for profit, increase by 3 levels" and inserting in lieu thereof "other than for profit, decrease by 3 levels".

Reason for Amendment: The purpose of this amendment is to conform the structure of this guideline to that of § 2L1.1.

Related amendment: 164 (§ 2L2.3).

§ 2L2.2 Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use

163. Section 2L2.2 is amended by inserting as a new subsection the following:

"(b) Specific Offense Characteristic

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.".

The Commentary to § 2L2.2 captioned "Application Notes" is amended by deleting:

"1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide a result equivalent to § 2L1.2.",

by renumbering Note 2 as Note 1, and by deleting "Notes" and inserting in lieu thereof "Note".

Reason for Amendment: The purpose of this amendment is to convert a departure recommendation into a specific offense characteristic. Related amendment: 165 (§ 2L2.4).

§ 2L2.3 Trafficking in a United States Passport

164. *Proposed Amendment:* Section 2L2.3(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L2.3(b)(1) is amended by deleting "for profit, increase by 3 levels" and inserting in lieu thereof "other than for profit, decrease by 3 levels".

Reason for Amendment: The purpose of this amendment is to conform the structure of this guideline to that of § 2L1.1. Related amendment: 162 (§ 2L2.1).

§ 2L2.4 Fraudulently Acquiring or Improperly Using a United States Passport

165. Section 2L2.4 is amended by inserting as a new subsection the following:

"(b) Specific Offense Characteristic

(1) If the defendant is an unlawful alien who has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, increase by 2 levels.".

The Commentary to § 2L2.4 captioned "Application Notes" is amended by deleting:

"1. In the case of a defendant who is an unlawful alien and has been deported (voluntarily or involuntarily) on one or more occasions prior to the instant offense, the Commission recommends an upward departure of 2 levels in order to provide a result equivalent to § 2L1.2.",

by renumbering Note 2 as Note 1, and by deleting "Notes" and inserting in lieu thereof "Note".

Reason for this Amendment: The purpose of this amendment is to convert a departure recommendation into a specific offense characteristic. Related amendment: 163 (§ 2L2.2).

§ 2N3.1 Odometer Laws and Regulations

166. *Proposed Amendment:* Section 2N3.1(b) is amended by deleting:

"If more than one vehicle was involved, apply § 2F1.1 (Offenses Involving Fraud or Deceit).", and inserting in lieu thereof:

"(b) Cross Reference

(1) If the offense involved more than one vehicle, apply § 2F1.1 (Fraud and Deceit)."

Reason for Amendment: The purpose of this amendment is to correct a clerical error, and to conform the phraseology of this subsection to that used elsewhere in the guidelines. The caption "Cross reference" and "(1)" are added, and the cross reference to "Offenses Involving Fraud or Deceit" is corrected to read "Fraud and Deceit".

§ 2P1.1 Escape, Instigating or Assisting Escape

167. *Proposed Amendment:* Section 2P1.1(a) is amended by deleting:

"(1) 13, if from lawful custody resulting from a conviction or as a result of a lawful arrest for a felony;

(2) 8, if from lawful custody awaiting extradition, pursuant to designation as a recalcitrant witness or as a result of a lawful arrest for a misdemeanor.",

and inserting in lieu thereof:

"(1) 13, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense;

(2) 8, otherwise.".

Reason for Amendment: The purpose of this amendment is to clarify the language of the guideline by making it conform more closely to that used in 18 U.S.C. 751, the statute from which it was derived.

168. *Proposed Amendment:* Section 2P1.1(b)(3) is amended by deleting:

"If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.",

and inserting in lieu thereof:

"If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by 2 levels.".

Reason for Amendment: The current specific offense characteristic (b)(3) applies only to correctional officers or Justice Department employees, and not to local or state law enforcement officers who might have custody of a federal prisoner, or even to federal law enforcement officers who are not employed by the Department of Justice (e.g., Secret Service agents are employed by the Treasury Department). It also does not appear to apply to law enforcement or correctional employees who are not sworn officers unless they are Justice Department employees. The purpose of this amendment is to correct this error.

169. *Offense Levels for Certain Escapes:* Under the current guidelines, an escape from custody resulting from a conviction or a lawful arrest for a felony has a base offense level of 13. If, however, the escape is from non-secure custody and the defendant returns voluntarily within 96 hours, the base offense level is reduced by 7 levels to level 6. If the defendant does not return voluntarily within 96 hours, there is no difference in offense level between an escape from secure or non-secure custody.

The Commission seeks comment on whether an additional distinction should be made between escape from secure and non-secure custody for cases not covered by the 7 level reduction for voluntary return from an escape from non-secure secure custody within 96 hours. Some practitioners have reported that the guidelines have drastically increased the sanctions for escapes from non-secure custody not eligible for the 7-level reduction as contrasted to past practice. Most such defendants will have a criminal history score of at least five (at least 2 points from § 4A1.1(b); 2 points from § 4A1.1(d); and 1 point from § 4A1.1(e)). The Bureau of Prisons has recommended an offense level of 10 (3-levels less than base offense level 13) for an escape from non-secure custody not qualifying for the reduction for voluntary return within 96 hours).

The Commission also seeks comment on whether there should be any reduction for voluntary return and, if such a reduction is appropriate, whether the 96 hours distinction currently used is appropriate. Comment is also sought on whether any distinction between escape from secure and non-secure custody should take into account the nature of the offense for which he is confined, or the security level of the institution in which the defendant is confined. If a distinction between escape from secure

and non-secure custody is appropriate, should or should not this distinction apply in the case of all offenders or should such a distinction not apply to certain offenders such as drug traffickers or violent offenders? Should a failure to return from a furlough from a secure institution be treated differently than a failure to return from a furlough from a non-secure institution? Where a defendant is returned to custody following an arrest for a new crime while on escape status, such return does not constitute a voluntary return for guideline purposes. Should the guidelines, however, provide an additional distinction to cover cases in which the defendant returns voluntarily from an escape and is later discovered to have committed a new offense while on escape status? If additional distinctions to the guidelines are believed warranted, comments are sought as to the most appropriate structure to accommodate such distinctions.

§ 2P1.2 Providing or Possessing Contraband in Prison

170. *Proposed Amendment:* Section 2P1.2(b)(1) is amended by deleting:

"If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.",

and inserting in lieu thereof:

"If the defendant was a law enforcement or correctional officer or employee, or an employee of the Department of Justice, at the time of the offense, increase by 2 levels.".

Reason for Amendment: The current specific offense characteristic (b)(3) applies only to correctional officers or Justice Department employees, and not to local or state law enforcement officers who might have custody of a federal prisoner, or even to federal law enforcement officers who are not employed by the Department of Justice (e.g., Secret Service agents are employed by the Treasury Department). It also does not appear to apply to law enforcement or correctional employees who are not sworn officers unless they are Justice Department employees. The purpose of this amendment is to correct this anomaly.

171. *Proposed Amendment:* Section 2P1.2 is amended by inserting the following cross reference:

"(c) Cross Reference

(1) If the defendant is convicted under 18 U.S.C. 1791(a)(1) and is punishable under 18 U.S.C. 1791(b)(1), the offense level is 2 plus the offense level from § 2D1.1, but in no event less than level 26.".

The Commentary to § 2P1.2 captioned "Application Note" is amended by deleting the "Note" and inserting in lieu thereof "Notes", and inserting the following additional Note:

"2. Pursuant to 18 U.S.C. 1791(c), a sentence imposed upon an inmate for a violation of 18 U.S.C. 1791 shall be consecutive to the sentence being served at the time of the violation.".

Reason for Amendment: This amendment implements the direction to the Commission in Section 6468 of the Omnibus Anti-Drug Abuse Act of 1988.

Additional Explanatory Statement: Section 6468 of the Omnibus Anti-Drug Abuse Act of 1988 contains a direction to the Commission to establish an offense level for the offense of providing certain controlled substances to an inmate that is 2 levels greater than the offense level for the underlying offense, but in no event less than level 26. The proposed amendment implements this direction to the Commission.

§ 2P1.4 Trespass on Bureau of Prisons Facilities

172. *Proposed Amendment:* Section 2P1.4 and the Commentary thereto are amended by deleting the entire text, including the title, as follows:

"§ 2P1.4. Trespass on Bureau of Prisons Facilities

(a) Base Offense Level: 6

Commentary

Statutory Provision: 18 U.S.C. 1793.".

Reason for Amendment: The purpose of this amendment is to delete a guideline applying only to a petty offense. Petty offenses were deleted from coverage of the guidelines by the adoption of § 1B1.9 (effective June 15, 1988). Related amendment: 15 (§ 1B1.9).

§ 2Q1.3 Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering and Falsification

173. *Proposed Amendment:* The Commentary to § 2Q1.3 captioned "Statutory provisions" is amended by deleting "§ 4912,".

Reason for Amendment: The purpose of this amendment is to delete a reference to a petty offense. Related amendment: 15 (§ 1B1.9).

§ 2Q1.4 Tampering or Attempted Tampering With Public Water System

174. *Proposed Amendment:* Section 2Q1.4(b)(1) is amended by inserting "bodily" immediately preceding "injury".

The Commentary to § 2Q1.4 captioned "Application Note" is amended by deleting Note 1 and inserting in lieu thereof:

"1. 'Serious bodily injury' is defined in the Commentary to § 1B1.1 (Application Instructions).".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 2Q1.5 Threatened Tampering With Public Water System

175. *Proposed Amendment:* Section 2Q1.5(b) is amended by deleting:

"(2) If the purpose of the offense was to influence government action or to extort money, increase by 8 levels.";

and by inserting as a new subsection:

"(c) Cross Reference

(1) If the purpose of the offense was to influence government action or to extort money, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).".

Section 2Q1.5(b) is amended by deleting "Characteristics" and inserting in lieu thereof "Characteristic".

Reason for Amendment: The purposes of this amendment are to convert a specific offense characteristic to a cross-reference and make the guidelines internally more consistent.

§ 2Q1.6 Hazardous or Injurious Devices on Federal Lands

176. *Proposed Amendment:* Chapter Two, Part Q, Subpart 1, is amended by inserting the following additional guideline and accompanying Commentary:

"§ 2Q1.6 Hazardous or Injurious Devices on Federal Lands

(a) Base Offense Level (Apply the Greatest)

(1) If the intent was to violate the Controlled Substance Act, apply § 2D1.9 (Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances);

(2) If the intent was to obstruct the harvesting of timber, and property destruction resulted, apply § 2B1.3 (Property Damage or Destruction (Other Than by Arson or Explosives));

(3) If the offense involved reckless disregard to the risk that another person would be placed in danger of death or serious bodily injury under circumstances manifesting extreme indifference to such risk, [2 levels less than the offense level] [1 level less than the offense level] [the offense level] from § 2A2.2 (Aggravated Assault);

(4) Otherwise, 6.

Statutory Provision: 18 U.S.C. 1864.

Background: The statute covered by this guideline proscribes a wide variety of conduct, ranging from placing nails in trees to interfere with harvesting equipment to placing anti-personnel devices capable of causing death or serious bodily injury to protect the unlawful production of a controlled substance. Subsections (a)(1)-

(a)(3) cover the more serious forms of this offense. Subsection (a)(4) provides a minimum offense level of 6 where the intent was to obstruct the harvesting of timber and little or no property damage resulted.".

Reason for Amendment: The proposed amendment adds a guideline to cover an offense created by section 6254(f) of the Omnibus Anti-Drug Abuse Act of 1988.

Additional Explanatory Statement: Section 6254(f) of the Omnibus Anti-Drug Abuse Act of 1988 prohibits the placing of hazardous or injurious devices on federal land with intent (1) to violate the Controlled Substance Act, (2) to obstruct or harass the harvesting of timber, or (3) with reckless disregard to the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk.

The alternative base offense levels cover the various forms of conduct covered by this statute. Three options for subsection (a)(3) are shown. The Commission seeks comment on whether an offense level less than that provided under § 2A2.2 (Aggravated Assault) should be used because the offense covered by this guideline does not require a specific intent to injure.

§ 2Q2.1 Specially Protected Fish, Wildlife, and Plants

177. *Proposed Amendment:* Section 2Q2.1(b)(3) is amended by deleting "Apply" and inserting in lieu thereof "If more than one applies, use".

Reason for Amendment: The purpose of this amendment is to conform to the style of other guidelines.

178. *Proposed Amendment:* Section 2Q2.1 is amended in the title by inserting at the end "; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants"

The Commentary to § 2Q2.1 captioned "Statutory Provisions" is amended by inserting immediately before the period at the end", 3373(d); 18 U.S.C. 545".

The Commentary to § 2Q2.1 captioned "Background" is amended in the first sentence by deleting "and the Fur Seal Act. These statutes provide special protection to particular species of fish, wildlife and plants." and inserting in lieu thereof "the Fur Seal Act, the Lacey Act, and to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants.".

Reasons for Amendment: The purpose of this amendment is to consolidate two guidelines that cover similar offenses.

Additional Explanatory Statement: §§ 2Q2.1 and 2Q2.2 are virtually identical. Accordingly, the amendment would combine them into a single guideline by deleting § 2Q2.2 and incorporating the material it covers into § 2Q2.1. The base offense level for the combined guidelines is level 6. Throughout the guidelines generally a base offense level of 6 is assigned to misdemeanors and, specifically, a base offense level of 6 is provided for misdemeanors under § 2Q1.1. Thus, the alternate base offense level of 4 from § 2Q2.2 is eliminated as anomalous.

§ 2Q2.2 Lacey Act: Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants

179. *Proposed Amendment:* Section § 2Q2.2 is amended by deleting the guideline and the Commentary thereto, including the title, in its entirety, as follows:

"§ 2Q2.2. Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants

(a) Base Offense Level:

(1) 6, if the defendant knowingly imported or exported fish, wildlife, or plants, or knowingly engaged in conduct involving the sale or purchase of fish, wildlife, or plants with a market value greater than $350; or

(2) 4.

(b) Specific Offense Characteristics

(1) If the offense involved a commercial purpose, increase by 2 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 2 levels.

(3) Apply the greater:

(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 4 levels.

Commentary

Statutory Provisions: 16 U.S.C. 3773(d); 18 U.S.C. 545.

Application Note:

1. This section applies to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. In other cases, see §§ 2T3.1 and 2T3.2.

Background: This section applies to violations of the Lacey Act Amendments of 1981, 16 U.S.C. 3373(d), and to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. These are the principal enforcement statutes utilized to combat interstate and foreign commerce in unlawfully taken fish, wildlife, and plants. The adjustments for specific offense characteristics are identical to those in § 2Q2.1.".

Reason for Amendment: The purpose of this amendment is to consolidate this guideline with § 2Q2.1. See explanation at Amendment 178.

§ 2R1.1 Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors

180. *Proposed Amendment:* Section 2R1.1(b)(2) is amended in the first column of the table by deleting:

"Volume of Commerce

(A) Less than $1,000,000.
(B) $1,000,000–$4,000,000.
(C) $4,000,001–$15,000,000.
(D) $15,000,001–$50,000,000.
(E) over $50,000,000".

and inserting in lieu thereof:

"Volume of Commerce (Apply the Greatest)

(A) Less than $1,000,000.
(B) $1,000,000–$4,000,000.
(C) More than $4,000,000.
(D) More than $15,000,000.
(E) More than $50,000,000".

Reason for Amendment: The purpose of this amendment is to eliminate minor gaps in the loss table. Related amendments: 32 (§ 2B1.1); 39 (§ 2B2.1); 47 (§ 2B3.1); 115 (§ 2F1.1); 181 (§ 2S1.1); 209 (§ 2T4.1).

* * * * *

§ 2S1.1 Laundering of Monetary Instruments

181. *Proposed Amendment:* Section 2S1.1(b)(2) is amended in the first column of the table by deleting:

"Value

(A) $100,000 or less.
(B) $100,001–$200,000.
(C) $200,001–$350,000.
(D) $350,001–$600,000.
(E) $600,001–$1,000,000.
(F) $1,000,001–$2,000,000.
(G) $2,000,001–$3,500,000.
(H) $3,500,001–$6,000,000.
(I) $6,000,001–$10,000,000.
(J) $10,000,001–$20,000,000.
(K) $20,000,001–$35,000,000.
(L) $35,000,001–$60,000,000.
(M) $60,000,001–$100,000,000.
(N) more than $100,000,000".

and inserting in lieu thereof:

"Value (Apply the Greatest)

(A) $100,000 or less.
(B) More than $100,000.
(C) More than $200,000.
(D) More than $350,000.
(E) More than $600,000.
(F) More than $1,000,000.
(G) More than $2,000,000.
(H) More than $3,500,000.
(I) More than $6,000,000.
(J) More than $10,000,000.
(K) More than $20,000,000.
(L) More than $35,000,000.
(M) More than $60,000,000.

(N) More than $100,000,000".

Reason for Amendment: The purpose of this amendment is to eliminate minor gaps in the value table. Related amendments: 32 (§ 2B1.1); 39 (§ 2B2.1); 47 (§ 2B3.1); 115 (§ 2F1.1); 180 (§ 2R1.1); 209 (§ 2T4.1).

182. *Proposed Amendment:*

[OPTION 1: The Commentary to § 2S1.1 captioned "Background" is amended in the third paragraph by adding the following new sentence at the end thereof: "Effective November 18, 1988, 18 U.S.C. 1956(a)(1)(A) contains two subsections. The base offense level of 23 applies to § 1956(a)(1)(A) (i) and (ii).".]

[OPTION 2: Section 2S1.1 is amended by inserting the following new subsection:

"(c) Cross Reference:

If the defendant is convicted of violating 18 U.S.C. 1956(a)(1)(A)(ii), apply § 2T1.1 (Tax Evasion) as if the defendant had been convicted of violating 26 U.S.C. 7201.

(d) Note:

In the case of an offense committed prior to November 18, 1988, the base offense level from subsection (a)(1) applies to any conviction under 18 U.S.C. 1956(a)(1)(A).".

The Commentary to § 2S1.1 captioned "Background" is amended in the third paragraph by deleting "(a)(1)(A)", and inserting in lieu thereof "(a)(1)(A)(i)".]

Reason for Amendment: The purpose of this amendment is to reflect a newly created means of violating 18 U.S.C. 1956. Additional Explanatory Statement: Section 6471 of the Omnibus Anti-Drug Abuse Act of 1988 creates a new subsection in 18 U.S.C. 1956(a)(1)(A) proscribing money laundering for the purpose of evading taxes. Two options for incorporating this statutory amendment in the guidelines appear above. First, the Commission could treat a conviction under section 1956(a)(1)(A)(ii) the same as a conviction under section 1956(a)(1)(A)(i). Second, the Commission could treat a violation of section 1956(a)(1)(A)(ii) the same as a conviction for tax evasion. The Commission seeks public comment with respect to these options.

183. *Proposed Amendment:* The Commentary to § 2S1.1 captioned "Background" is amended in the fourth paragraph by deleting "involvement" and inserting in lieu thereof "support thereof".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

§ 2S1.2 Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity

184. *Proposed Amendment:* Section 2S1.2(b)(1)(A) is amended by adding at the end "or".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 2S1.3 Failure to Report Monetary Transactions; Structuring Transactions to Evade Reporting Requirements

185. *Proposed Amendment:* Section 2S1.3(a)(1)(C) is amended by deleting "the proceeds of criminal activity" and inserting in lieu thereof "criminally derived property", and in subsection (b)(1) by inserting "property" immediately following "criminally derived".

The Commentary to § 2S1.3 captioned "Application Note" is amended by deleting:

"1. As used in this guideline, funds or other property are the 'proceeds of criminal activity' or 'criminally derived' if they are 'criminally derived property,' within the meaning of 18 U.S.C. 1957.",

and inserting in lieu thereof:

"1. 'Criminally derived property' means any property constituting, or derived from, proceeds obtained from a criminal offense. See 18 U.S.C. 1957(f)(2).".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

186. *Proposed Amendment:* The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting immediately before "31 U.S.C." "26 U.S.C. 7203 (if a willful violation of 26 U.S.C. 6050I);".

Reason for Amendment: The purpose of this amendment is to conform the guideline to a revision of the relevant statute. Related amendment: 194 (§ 2T1.2); 287 (Appendix A).

187. *Proposed Amendment:* The Commentary to § 2S1.3 captioned "Application Note" is amended in the captioned by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional Note:

"2. Subsection (a)(1)(C) applies in circumstances that would have led a reasonable person to believe that the funds were criminally derived property. Subsection (b)(1) applies if the defendant knew or believed the funds were criminally derived property. Subsection (b)(1) applies in addition to, and not in lieu of, subsection (a)(1)(C). It is possible that a defendant 'believed' or 'reasonably should have believed' that the funds were criminally derived property even if, in fact, the funds were not so derived (e.g., in a 'sting' operation where the defendant is told the funds were derived from the unlawful sale of controlled substances).".

The Commentary to § 2S1.3 captioned "Background" is amended by deleting:

"The base offense level is set at 13 for the great majority of cases. However, the base offense level is set at 5 for those cases in which these offenses may be committed with innocent motives and the defendant reasonably believed that the funds were from legitimate sources. The higher base offense level applies in all other cases. The offense level is increased by 5 levels if the defendant knew that the funds were criminally derived.",

and inserting in lieu thereof the following:

"A base offense level of 13 is provided for those offenses where the defendant either structured the transaction to evade reporting requirements, made false statements to conceal or disguise the activity, or reasonably should have believed that the funds were the proceeds of criminal activity. A lower alternative base offense level of 5 is provided in all other cases. The Commission anticipates that such cases will involve simple recordkeeping or other more minor technical violations of the regulatory scheme governing certain monetary transactions committed by defendants who reasonably believe that the funds at issue emanated from legitimate sources. Where the defendant actually knew or believed that the funds were criminally derived, subsection (b)(1) provides for a 5 level increase in the offense level.".

The Commentary to § 2S1.3 captioned "Statutory Provisions" is amended by inserting "18 U.S.C. 1005;" immediately following "Provisions". Section 2S1.3(a)(1)(A) is amended by adding "or" immediately following "requirements;"

Reason for Amendment: The purposes of this amendment are to clarify the Commentary, to provide more complete statutory references, and to conform the format of the guideline to that used in other guidelines.

* * * * *

§ 2T1.1 Tax Evasion

188. *Proposed Amendment:* Section 2T1.1(a) is amended by deleting "When more than one year is involved, the tax losses are to be added.".

The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 2 by deleting "The court is to determine this amount as it would any other guideline factor." and inserting in lieu thereof "Although the definition of tax loss corresponds to what is commonly called the 'criminal deficiency,' its amount is to be determined by the same rules applicable in determining any other sentencing factor.".

The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 3 by deleting:

"Although the definition of tax loss corresponds to what is commonly called the 'criminal deficiency,' its amount is to be determined by the same rules applicable in determining any other sentencing factor. In accordance with the 'relevant conduct' approach adopted by the guidelines, tax losses resulting from more than one year are to be added whether or not the defendant is convicted of multiple counts.",

and by inserting in lieu thereof:

"In determining the total tax loss attributable to the offense (see § 1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated.".

Reason for Amendment: The purpose of this amendment is to clarify the determination of tax loss and to make this instruction consistent among §§ 2T1.1–2T1.3. Related amendments: 196 (§ 2T1.2); 199 (§ 2T1.3).

* * * * *

189. *Proposed Amendment:* Section 2T1.1(a) is amended by deleting ", including interest to the date of filing an indictment or information". The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 2 by deleting ", plus interest to the date of the filing of an indictment or information" and by inserting "interest or" immediately before "penalties.".

Reason for Amendment: The purpose of this amendment is to delete interest from the calculation of tax loss.

Additional Explanatory Statement: Inclusion of interest in determining total "tax loss" or criminal deficiency increases the complexity of guideline calculations, especially if the amount evaded is in dispute and thus must be determined at the sentencing hearing. Because interest accumulates, the amount of tax evaded would have to be determined year by year, frequently at different interest rates. The interest also accrues until the date of filing of an indictment or information. Thus, another complicating factor is that charges are sometimes withdrawn and refiled; in such cases it is not clear which cut-off date controls. Where multiple years of evasion are involved (which is normally the case), these calculations must be done separately for each year that taxes were evaded. This complexity is inconsistent with the spirit of the Commentary in § 2T1.1 which describes how the overlapping guideline ranges are designed to minimize the significance of disputes about tax loss. In addition, the inclusion of interest appears inconsistent with all other property offense guidelines and even some tax offense guidelines. When the individual is a victim in a theft or fraud case, lost interest does not increase the penalty for the defendant. Adoption of the proposed amendment should not result in significant changes in sentences; in most cases the deletion of interest will not affect the offense level by more than one level, if at all. It is also to be noted that the Commission is proposing an increase in the offense levels for various portions of the Tax Loss Table (Amendment 210). Related amendment: 202 (§ 2T1.6).

190. *Proposed Amendment:* Section 2T1.1(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

Reason for Amendment: The purposes of this amendment are to provide a more objective test for application of this enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year. Related amendments: 193 (§ 2T1.2); 197 (§ 2T1.3).

191. *Proposed Amendment:* The Commentary to § 2T1.1 captioned "Application Notes" is amended in Note 6 by deleting "Whether 'sophisticated means' were employed (§ 2T1.1(b)(2)) requires a subjective determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof:

" 'Sophisticated means,' as used in § 2T1.1(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary. Related amendments: 195 (§ 2T1.2); 198 (§ 2T1.3); 201 (§ 2T1.4).

* * * * *

192. *Proposed Amendment:* The Commentary to § 2T1.1 captioned "Background" is amended in the second paragraph by deleting "Tax Table" wherever it appears and inserting in lieu thereof in each instance "Sentencing Table".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

* * * * *

§ 2T1.2 Willful Failure to File Return, Supply Information, or Pay Tax

193. *Proposed Amendment:* Section 2T1.2(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

Reason for Amendment: The purposes of this amendment are to provide a more objective test for application of enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year. Related amendments: 190 (§ 2T1.1); 197 (§ 2T1.3).

194. *Proposed Amendment:* Section 2T1.2 is amended by adding the following additional subsection:

"(c) Cross Reference

(1) If the defendant is convicted of a willful violation of 26 U.S.C. 6050I, apply § 2S1.3 (Failure to Report Monetary Transactions) in lieu of this guideline."

The Commentary to § 2T1.2 captioned "Statutory Provision" is amended by inserting immediately before the period at the end of the sentence "(other than a willful violation of 26 U.S.C. 6050I)".

Reason for Amendment: The purpose of this amendment is to conform the guideline to a revision of the relevant statute. Related amendments: 186 (§ 2S1.3); 287 (Appendix A).

Additional Explanatory Statement: Section 7601 of the Omnibus Anti-Drug Abuse Act of 1988 revises 26 U.S.C. 6050I so that willful violations of that tax law are now analogous to money laundering statutes. As a result, § 2S1.3 should now cover willful violations of § 6050I.

195. *Proposed Amendment:* The Commentary to § 2T1.2 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.2(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: " 'Sophisticated means,' as used in § 2T1.2(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary. Related amendments: 191 (§ 2T1.1); 198 (§ 2T1.3); 201 (§ 2T1.4).

196. *Proposed Amendment:* The Commentary to § 2T1.2 captioned "Application Note" is amended in the caption by deleting "Note" and inserting in lieu thereof "Notes", and by inserting the following additional Note:

"3. In determining the total tax loss attributable to the offense (see § 1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated.".

Reason for Amendment: The purpose of this amendment is to clarify the determination of tax loss. Related amendments: 188 (§ 2T1.1); 199 (§ 2T1.3).

§ 2T1.3 Fraud and False Statements Under Penalty of Perjury

197. *Proposed Amendment:* Section 2T1.3(b)(1) is amended by deleting "(A)" and ", or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income", by inserting "or to correctly identify the source of" immediately after "report", and by deleting "per" and inserting in lieu thereof "in any".

Reason for Amendment: The purposes of this amendment are to provide a more objective test for application of enhancement, and to make clear that this enhancement applies if the defendant fails to report or disguises income exceeding $10,000 from criminal activity in any year. Related amendments: 190 (§ 2T1.1); 193 (§ 2T1.2).

* * * * *

198. *Proposed Amendment:* The Commentary to § 2T1.3 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.3(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: " 'Sophisticated means,' as used in § 2T1.3(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary. Related amendments: 191 (§ 2T1.1); 195 (§ 2T1.2); 201 (§ 2T1.4).

199. *Proposed Amendment:* The Commentary to § 2T1.3 captioned "Application Notes" is amended by inserting the following additional Note:

"3. In determining the total tax loss attributable to the offense (see § 1B1.3(a)(2)), all conduct violating the tax laws should be considered as part of the same course of conduct or common scheme or plan unless the evidence demonstrates that the conduct is clearly unrelated.".

Reason for Amendment: The purpose of this amendment is to clarify the determination of tax loss. Related amendments: 190 (§ 2T1.1); 196 (§ 2T1.2).

§ 2T1.4 Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud

200. *Proposed Amendment:* The Commentary to § 2T1.4 captioned "Application Notes" is amended in Note 2 by deleting "§ 2T1.1(b)(2)" and inserting in lieu thereof "§ 2T1.4(b)(2)".

Reason for Amendment: The purpose of this amendment is to correct a clerical error. If proposed amendment 199 is adopted, this proposed amendment is withdrawn as unnecessary.

201. *Proposed Amendment:* The Commentary to § 2T1.4 captioned "Application Notes" is amended in Note 2 by deleting "Whether 'sophisticated means' were employed (§ 2T1.1(b)(2)) requires a determination similar to that in § 2F1.1(b)(2)." and inserting in lieu thereof: " 'Sophisticated means,' as used in § 2T1.4(b)(2), includes conduct that is more complex or demonstrates greater intricacy or planning than a routine tax-evasion case.".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary. Related amendments: 195 (§ 2T1.2); 198 (§ 2T1.3).

§ 2T1.6 Failing to Collect or Truthfully Account for and Pay Over Tax

202. *Proposed Amendment:* Section 2T1.6(a) is amended by deleting ", plus interest".

Reason for Amendment: The purpose of this amendment is to delete interest from the calculation of tax loss. Related amendment: 189 (§ 2T1.1).

§ 2T1.9 Conspiracy to Impair, Impede or Defeat Tax

203. *Proposed Amendment:* Section 2T1.9(b) is amended by deleting "either of the following adjustments" and inserting in lieu thereof "more than one".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

204. *Proposed Amendment:* The Commentary to section 2T1.9 captioned "Application Notes" is amended by deleting:

"2. The minimum base offense level is 10. If a tax loss from the conspiracy can be established under either §§ 2T1.1 or 2T1.3 (whichever applies to the underlying conduct), and that tax loss corresponds to a higher offense level in the Tax Table (§ 2T4.1), use that higher base offense level.

3. The specific offense characteristics are in addition to those specified in § 2T1.1 and § 2T1.3.

4. Because the offense is a conspiracy, adjustments from Chapter Three, Part B (Role in the Offense) usually will apply.",

and inserting in lieu thereof:

"2. The base offense level is the offense level (base offense level plus any applicable specific offense characteristics) from §§ 2T1.1 or 2T1.3 (whichever is applicable to the underlying conduct) if that offense level is greater than 10. Otherwise, the base offense level is 10.

3. Specific offense characteristics from § 2T1.9(b) are to be applied to the base offense level determined under § 2T1.9(a)(1) or (2).".

Reason for Amendment: The purpose of this amendment is to clarify Application Notes 2 and 3. Application Note 4 (the content of which does not appear in any of the other guidelines covering conspiracy) is deleted as unnecessary.

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205. If the calculation of interest is deleted from § 2T1.1 (amendment 189), the offense levels for §§ 2T1.1, 2T1.3, and 2T1.4 will be similar and will all depend upon the level of the "tax loss." The Commission seeks comment on whether the term "tax loss" should be standarized and, if so, on how this might best be accomplished. The Commission also seeks comment on how this term might be clarified. In addition, the Commission seeks comment on whether the offense level for § 2T1.2 should be more similar to, or the same as, § 2T1.1.

§ 2T3.1 Evading Import Duties or Restrictions (Smuggling)

206. *Proposed Amendment:* The Commentary to § 2T3.1 captioned "Application Notes" is amended in Note 2 by inserting "if the increase in market value due to importation is not readily ascertainable" immediately following "United States".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary. Related amendment: 207 (§ 2T3.2).

§ 2T3.2 Receiving or Trafficking in Smuggled Property

207. *Proposed Amendment:* The Commentary to § 2T3.2 is amended by inserting, at the end, the following caption and note:

"Application Note:

1. Particular attention should be given to those items for which entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, the court should impose a sentence above the guideline. A sentence based upon an alternative measure of the "duty" evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States, might be considered.".

Reason for Amendment: The purpose of this amendment is to clarify the application of the guideline by adding the text from Application Note 2 of the Commentary to § 2T3.1, which applies equally to this guideline section.

208. *Proposed Amendment:* The Commentary to § 2T3.2 captioned "Application Notes" (added by Amendment 206) is amended in Note 1 by inserting "if the increase in market

value due to importation is not readily ascertainable" immediately following "United States".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary. Related amendment: 206 (§ 2T3.1).

§ 2T4.1 Tax Table

209. *Proposed Amendment.* Section 2T4.1 is amended in the first column of the tax table by deleting:

"Tax Loss

(A) less than $2,000.
(B) $2,000–$5,000.
(C) $5,001–$10,000.
(D) $10,001–$20,000.
(E) $20,001–$40,000.
(F) $40,001–$80,000.
(G) $80,001–$150,000.
(H) $150,001–$300,000.
(I) $300,001–$500,000.
(J) $500,001–$1,000,000.
(K) $1,000,001–$2,000,000.
(L) $2,000,001–$5,000,000.
(M) more than $5,000,000".

and inserting in lieu thereof:

"Tax Loss (Apply the Greatest)

(A) $2,000 or less.
(B) More than $2,000.
(C) More than $5,000.
(D) More than $10,000.
(E) More than $20,000.
(F) More than $40,000.
(G) More than $80,000.
(H) More than $150,000.
(I) More than $300,000.
(J) More than $500,000.
(K) More than $1,000,000.
(L) More than $2,000,000.
(M) More than $5,000,000".

Reason for Amendment: The purpose of this amendment is to eliminate minor gaps in the tax table. Related amendments: 32 (§ 2B1.1); 39 (§ 2B2.1); 47 (§ 2B3.1); 115 (§ 2F1.1); 180 (§ 2R1.1); 1B1 (§ 2S1.1).

210. *Proposed Amendment:* Section 2T4.1, as amended by proposed amendment 209, is further amended by deleting:

"(G)	More than $80,000	12
(H)	More than $150,000	13
(I)	More than $300,000	14
(J)	More than $500,000	15
(K)	More than $1,000,000	16
(L)	More than $2,000,000	17
(M)	More than $5,000,000	18"

and inserting in lieu thereof:

"(G)	More than $70,000	12
(H)	More than $120,000	13
(I)	More than $200,000	14
(J)	More than $350,000	15
(K)	More than $500,000	16
(L)	More than $800,000	17
(M)	More than $1,500,000	18
(N)	More than $2,500,000	19
(O)	More than $5,000,000	20".

Reason for Amendment: The purpose of this amendment is to increase the offense levels for offenses with larger loss values to better reflect the seriousness of the conduct. Related amendments: 33 (§ 2B1.1); 116 (§ 2F1.1); 40 (§ 2B2.1); 48 (§ 2B3.1).

§ 2X1.1 Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline

211. *Proposed Amendment:* Section 2X1.1(b)(1) is amended by deleting "or solicitation".

Section 2X1.1(b) is amended by deleting:

"(3) If a solicitation, and the statute treats solicitation identically with the object of the offense, do not apply § 2X1.1(b)(1); i.e., the offense level for solicitation is the same as that for the object offense.",

and inserting in lieu thereof:

"(3)(A) If a solicitation, decrease by 3 levels unless the person solicited to commit the offense completed all the acts he believed necessary for successful completion of the object offense or the circumstances demonstrate that the person was about to complete all such acts but for apprehension or interruption by some similar event beyond such person's control.

(B) If the statute treats solicitation of the offense identically with the object offense, do not apply subdivision (A) above; i.e., the offense level for solicitation is the same as that for the object offense.".

Reason for Amendment: The current subsection (b)(1) does not clearly address how a solicitation is to be treated where the person solicited to commit the offense completes all the acts necessary for the successful completion of the offense. The purpose of this amendment is to clarify the treatment of such cases in a manner consistent with the treatment of attempts and conspiracies.

212. *Proposed Amendment:* Section 2X1.1 is amended in the title by deleting "Not Covered by a Specific Guideline" and inserting in lieu thereof "(Not Covered by a Specific Offense Guideline)". Section 2X1.1 is amended by inserting the following additional subsection:

"(c) Cross Reference.

(1) When an attempt, solicitation, or conspiracy is expressly covered by another offense guideline section, apply that guideline section.".

The Commentary to § 2X1.1 captioned Application Notes is amended by deleting Note 1 as follows:

"1. Certain attempts, conspiracies, and solicitations are covered by specific guidelines (e.g., § 2A2.1 includes attempt, conspiracy, or solicitation to commit murder; § 2A3.1 includes attempted criminal sexual abuse; and § 2D1.4 includes attempts and conspiracies to commit controlled substance offenses). Section 2X1.1 applies only in the absence of a more specific guideline.",

and inserting in lieu thereof:

"1. Certain attempts, conspiracies, and solicitations are expressly covered by other offense guidelines.

Offense guidelines that expressly cover attempts include: § 2A2.1 (Assault With Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2A3.1 (Criminal Sexual Abuse; Attempt or Assault with the Intent to Commit Criminal Sexual Abuse); § 2A3.2 (Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt to Commit Such Acts); § 2A3.3 (Criminal Sexual Abuse of a Ward (Statutory Rape) or Attempt to Commit Such Acts); § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact); § 2A4.2 (Demanding or Receiving Ransom Money); § 2A5.1 (Aircraft Piracy or Attempted Aircraft Piracy); § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2D1.4 (Attempts and Conspiracies (in drug offenses)); § 2E5.1 (Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan); § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Serious Injury (consumer products)); § 2Q1.4 (Tampering or Attempted Tampering with Public Water System).". Offense guidelines that expressly cover conspiracies include: § 2A2.1 (Assault With Intent to Commit Murder;

Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2D1.4 (Attempts and Conspiracies (in drug offenses)); § 2T1.9 (Conspiracy to Impair, Impede or Defeat Tax). Offense guidelines that expressly cover solicitations include: § 2A2.1 (Assault with Intent to Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder); § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); § 2E5.1 (Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan), § 2H1.2 (Conspiracy to Interfere with Civil Rights); § 2T1.9 (Conspiracy to Impair, Impede or Defeat Tax).".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

213. *Proposed Amendment:* The Commentary to § 2X1.1 captioned "Application Notes" is amended by deleting:

"4. If the defendant was convicted of conspiracy or solicitation and also for the completed offense, the conviction for the conspiracy or solicitation shall be imposed to run concurrently with the sentence for the object offense, except in cases where it is otherwise specifically provided for by the guidelines or by law. 28 U.S.C. 994(1)(2).".

Reason for Amendment: The purpose of this amendment is to delete an Application Note that does not apply to any determination under this section. The material in this application note is already covered under Chapter Three, Part D and Chapter Five, Part G.

214. *Proposed Amendment:* The Commentary to § 2X1.1 is amended by inserting the following additional application note:

"4. In certain cases, the participants may have completed (or have been about to complete but for apprehension or interruption) all of the acts necessary for the successful completion of part, but not all, of the intended offense. In such cases, the offense level for the count (or group of closely-related multiple counts) is the offense level for the intended offense less 3 levels (under § 2X1.1(b)(1) or (2)) or the offense level for the part of the offense for which the necessary acts were completed (or about to be completed but for apprehension or interruption), whichever is greater. For example, where the intended offense was the theft of $800,000 but the participants completed (or were about to complete) only the acts necessary to steal $30,000, the offense level is the offense level for the theft of $800,000 less 3 levels, or the offense level for the theft of $30,000, whichever is greater. In the case of multiple counts that are not closely-related, whether the 3-level reduction under § 2X1.1(b)(1) or (2) applies is determined separately for each count.".

Reason for Amendment: The purpose of this amendment is to clarify how the guidelines are to be applied to partially completed offenses.

215. *Proposed Amendment:* The Commentary to § 2X1.1 captioned "Application Notes" is amended in the last sentence of Note 2 by deleting "intended" and inserting in lieu thereof "attempted".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

§ 2X3.1 Accessory After the Fact

216. *Proposed Amendment:* The Commentary to § 2X3.1 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Underlying offense' means the offense as to which the defendant was an accessory.",

and inserting in lieu thereof:

" 'Underlying offense' means the offense as to which the defendant is convicted of being an accessory. Apply the base offense level plus any applicable specific offense characteristics that were known or should have been known by the defendant; see Application Note 1 of the Commentary to § 1B1.3 (Relevant Conduct).".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

§ 2X4.1 Misprision of Felony

217. *Proposed Amendment:* The Commentary to § 2X4.1 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Underlying offense' means the offense as to which the misprision was committed.",

and inserting in lieu thereof:

" 'Underlying offense' means the offense as to which the defendant is convicted of committing the misprision. Apply the base offense level plus any applicable specific offense characteristics that were known or should have been known by the defendant; see Application Note 1 of the Commentary to § 1B1.3 (Relevant Conduct).".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

§ 3A1.1 Vulnerable Victim

218. *Proposed Amendment:* Section 3A1.1 is amended by deleting "the victim" wherever it appears and inserting in lieu thereof in each instance "a victim", and by inserting "otherwise" immediately before "particularly".

The Commentary to § 3A1.1 captioned Application Notes is amended in Note 1 by deleting:

"any offense where the victim's vulnerability played any part in the defendant's decision to commit the offense",

and inserting in lieu thereof the following:

"offenses where an unusually vulnerable victim is made a target of criminal activity by the defendant",

and by deleting:

"sold fraudulent securities to the general public and one of the purchasers",

and inserting in lieu thereof:

"engaged in a fraudulent mail-order scheme and one of the respondents from the general public".

Reason for Amendment: The purpose of the amendment is to clarify the guideline and Commentary.

§ 3A1.2 Official Victim

219. *Proposed Amendment:* Section 3A1.2 is amended by deleting "official as defined" and inserting in lieu thereof "person included".

Reason for Amendment: The purpose of this amendment is to clarify that this guideline applies to all persons listed in the referenced statute, 18 U.S.C. 1114.

220. *Proposed Amendment:* Section 3A1.2 (as amended by amendment 219) is further amended by deleting "If the victim" and inserting in lieu thereof:

"If—

(a) the victim",

and by deleting "crime was motivated by such status, increase by 3 levels." and inserting in lieu thereof: "offense of conviction was motivated by such status; or

(b) during the course of the offense or immediate flight therefrom, the defendant or a person for whose conduct the defendant is otherwise accountable, knowing or having reasonable cause to believe that a person was a law enforcement or corrections officer, assaulted such officer in a manner creating a substantial risk of serious bodily injury, increase by 3 levels.".

The Commentary to § 3A1.2 captioned "Application Notes" is amended by adding at the end the following:

"4. 'Motivated by such status' in subdivision (a) means that the offense of conviction was motivated by the fact that the victim was a law enforcement or corrections officer or other person covered under 18 U.S.C. 1114, or a member of the immediate family thereof. This adjustment would not apply, for example, where both the defendant and victim were employed by the same government agency and the offense was motivated by a personal dispute.

5. Subdivison (b) applies in circumstances tantamount to aggravated assault against a law enforcement or corrections officer, committed in the course of, or in immediate flight following, another offense, such as bank robbery. While this subsection may

apply in connection with a variety of offenses that are not by nature targeted against official victims, its applicability is limited to assaultive conduct against law enforcement or corrections officers that is sufficiently serious to create at least a 'substantial risk of serious bodily injury' and that is proximate in time to the commission of the offense. Thus, the adjustment in subsection (b) would not apply to a convicted bank robber who knocked down a police officer in a minor scuffle while attempting to escape from the bank, nor would it apply to an assault against a police officer attempting an arrest several months following a bank robbery.

6. The phrase 'substantial risk of serious bodily injury' in subsection (b) is a threshold level of harm that includes any more serious injury that was risked, as well as actual serious bodily injury (or more serious harm) if it occurs.".

Reason for Amendment: The purpose of the amendment is to set forth more clearly the categories of cases to which this adjustment is intended to apply.

221. *Proposed Amendment:* The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 3 by inserting the following as an additional sentence:

"In most cases, the offenses to which subdivision (a) will apply will be from Chapter Two, Part A (Offenses Against the Person). The only offense guideline in Chapter Two, Part A that specifically incorporates this factor is § 2A2.4 (Obstructing or Impeding Officers).".

Reason for Amendment: The purpose of this amendment is to clarify the application of the guideline.

222. *Proposed Amendment:* The Commentary to section 3A1.2 captioned "Application Notes" is amended by inserting, as an additional application note, the following:

"4. 'Motivated by such status' means motivated by the fact that the victim was a law enforcement or corrections officer or other person covered under 18 U.S.C. 1114, or a member of the immediate family thereof. This adjustment would not apply, for example, where both the defendant and victim were employed by the same government agency and the offense was motivated by a personal dispute.".

Reason for Amendment: The purpose of this amendment is to clarify the application of the guideline. If amendment 220 is adopted, this amendment is withdrawn as unnecessary.

223. *Proposed Amendment:* Section 3A1.2 is amended by deleting "the victim was any law-enforcement or corrections officer, any other official as defined in 18 U.S.C. 1114, or a member of the immediate family thereof, and" and inserting in lieu thereof "(A) the victim was a law-enforcement or corrections officer; a former law-enforcement or corrections officer; an officer or employee included in 18 U.S.C. 1114; a former officer or employee included in 18 U.S.C. 1114; or a member of the immediate family of any of the above, and (B)".

Reason for Amendment: The purpose of this amendment is to expand the coverage of this provision to reflect a statutory revision effected by section 6487 of the Omnibus Anti-Drug Abuse Act of 1988.

§ 3A1.3 Restraint of Victim

224. *Proposed Amendment:* Section 3A1.3 is amended by deleting "the victim of a crime" and inserting in lieu thereof "a victim".

The Commentary to § 3A1.3 captioned "Application Notes" is amended in Note 2 by deleting "the victim" and inserting in lieu thereof "a victim".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

225. *Proposed Amendment:* The Commentary to § 3A1.3 captioned "Application Notes" is amended by inserting the following additional Note:

"3. If the restraint was sufficiently egregious, an upward departure may be warranted. See § 5K2.4 (Abduction or Unlawful Restraint).".

Reason for Amendment: The purpose of this amendment is to clarify the relationship between §§ 3A1.3 and 5K2.4.

§ 3C1.1 Willfully Obstructing or Impeding Proceedings

226. *Proposed Amendment:* Section 3C1.1 is amended by deleting "from Chapter Two".

Reason for Amendment: The purpose of this amendment is to delete an incorrect reference.

227. *Proposed Amendment:* The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by deleting:

", except in determining the combined offense level as specified in Chapter Three, Part D (Multiple Counts). Under § 3D1.2(e), a count for obstruction will be grouped with the count for the underlying offense. Ordinarily, the offense level for that Group of Closely Related Counts will be the offense level for the underlying offense, as increased by the 2-level adjustment specified by this section. In some instances, however, the offense level for the obstruction offense may be higher, in which case that will be the offense level for the Group. See § 3D1.3(a). In cases in which a significant further obstruction occurred during the investigation or prosecution of an obstruction offense itself (one of the above listed offenses), an upward departure may be warranted (e.g., where a witness to an obstruction offense is threatened during the course of the prosecution for the obstruction offense)."

and inserting in lieu thereof:

"To the offense level for that offense except where a significant further obstruction occurred during the investigation or prosecution of the obstruction offense itself (e.g., where the defendant threatened a witness during the course of the prosecution for the obstruction offense). Where the defendant is convicted both of the obstruction offense and the underlying offense, the count for the obstruction offense will be grouped with the count for the underlying offense under subsection (c) of § 3D1.2 (Groups of Closely-Related Counts). The offense level for that Group of Closely-Related Counts will be the offense level for the underlying offense increased by the 2-level adjustment specified by this section, or the offense level for the obstruction offense, whichever is greater.".

Reason for Amendment: The purpose of this amendment is to resolve an inconsistency between the Commentary in this section and the Commentaries in Chapter Two, Part J.

§ 3D1.2 Groups of Closely Related Counts

228. *Proposed Amendment:* Section 3D1.2(b)(3) is amended by deleting "§ 994(u)" and inserting in lieu thereof "§ 994(v)".

Reason for Amendment: This amendment corrects an erroneous reference.

229. *Proposed Amendment:* The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 3 by deleting "(6)", "(7)", and "(8)" and inserting in lieu thereof "(5)", "(6)", and "(7)" respectively.

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

230. *Proposed Amendment:* The Commentary to § 3D1.2 captioned "Application Notes" is amended in Note 9 by inserting after the second sentence:

"See § 1B1.2(d) and accompanying commentary.".

Reason for Amendment: The purpose of this amendment is to cross reference the newly created guideline subsection dealing with a multiple object conspiracy. Related amendment: 10 (§ 1B1.2).

231. *Proposed Amendment:* The Commentary to § 3D1.2 captioned "Background" is amended by deleting:

"In general, counts are grouped together only when they involve both the same victim (or societal harm in "victimless" offenses) and the same or contemporaneous transactions, except as provided in § 3D1.2 (c) or (d).",

and inserting in lieu thereof:

"Counts involving different victims (or societal harms in the case of "victimless" crimes) are grouped together only as provided in subsection (c) or (d).".

Reason for Amendment: The last sentence of the second paragraph of Background commentary fails to indicate that cases grouped under § 3D1.2(b) involve the same victim but do not require contemporaneous transactions. This amendment restates this sentence to clarify its meaning.

§ 3D1.3 Offense Level Applicable to Each Group of Closely-Related Counts

232. *Proposed Amendment:* Section 3D1.3(b) is amended in the second sentence by deleting "varying", and by inserting "of the same general type to which different guidelines apply (e.g., theft and fraud)" immediately following "offenses".

Reason for Amendment: The purpose of this amendment is to enhance the clarity of the guideline.

§ 3D1.5 Determining the Total Punishment

233. *Proposed Amendment:* The Commentary captioned "Illustrations of the Operation of the Multiple-Count Rules" following § 3D1.5 is amended in the last 2 sentences of example 3 by deleting "10" wherever it appears and inserting in lieu thereof in each instance "8".

Reason for Amendment: The amendment conforms to proposed amendment 117 to § 2F1.1.

§ 3E1.1 Acceptance of Responsibility

234. *Proposed Amendment:* The Commentary to § 3E1.1 captioned "Application Notes" is amended by deleting:

"4. An adjustment under this section is not warranted where a defendant perjures himself, suborns perjury, or otherwise obstructs the trial or the administration of justice (see § 3C1.1), regardless of other factors.",

and inserting in lieu thereof:

"4. Conduct resulting in an enhancement under § 3C1.1 (Willfully Obstructing or Impeding Proceedings) ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct. There may, however, be extraordinary cases in which adjustments under both §§ 3C1.1 and 3E1.1 may apply.".

Reason for Amendment: The purposes of this amendment are to provide for extraordinary cases in which adjustments under both § 3C1.1 and § 3E1.1 are appropriate, and to clarify the reference to obstructive conduct under § 3C1.1.

§ 4A1.1 Criminal History Category

235. *Proposed Amendment:* Section 4A1.1(e) is amended by inserting "or while in imprisonment or escape status on such a sentence" immediately before the period at the end of the first sentence.

The Commentary to § 4A1.1 captioned "Application Notes" is amended in the second sentence of Note 5 by deleting "still in confinement" and inserting in lieu thereof "in imprisonment or escape status".

Reason for Amendment: The purpose of this amendment is to clarify that subsection (e) applies to defendants who are still in confinement status at the time of the instant offense (e.g., a defendant who commits the instant offense while in prison or on escape status).

236. *Proposed Amendment:* The Commentary to § 4A1.1 captioned "Application Notes" is amended in Note 4 by inserting at the end the following additional sentence: "For the purposes of this item, a 'criminal justice sentence' means a sentence countable under § 4A1.2 (Definitions and Instructions for Computing Criminal History).".

Reason for Amendment: The purpose of this amendment is to clarify the application of the guideline.

237. *Proposed Amendment:* The Commentary to § 4A1.1 captioned "Background" is amended in the third paragraph by inserting "a" immediately before "criminal", and by deleting "control" and inserting in lieu thereof "sentence".

Reason for Amendment: The purpose of this amendment is to conform the commentary to the guideline.

§ 4A1.2 Definitions and Instructions for Computing Criminal History

238. *Proposed Amendment:* Section 4A1.2(e)(1) is amended by inserting ", whenever imposed," immediately preceding "that resulted", and deleting "defendant's incarceration" and inserting in lieu thereof "defendant being incarcerated".

Reason for Amendment: The purpose of this amendment is to make clear that "resulted in the defendant's incarceration" applies to any part of the defendant's imprisonment and not only to the commencement of the defendant's imprisonment.

239. *Proposed Amendment:* Section 4A1.2(e) is amended by inserting, as an additional subsection, the following:

"(4) The applicable time period for certain sentences resulting from offenses committed prior to age eighteen is governed by § 4A1.2(d)(2).".

Reason for Amendment: The purpose of this amendment is to clarify the relationship between § 4A1.2 (d)(2) and (e).

240. Proposed Amendment: Section 4A1.2(f) is amended by inserting ", or a plea of nolo contendere," immediately following "admission of guilt".

Reason for Amendment: The purpose of this amendment is to clarify that a plea of nolo contendere is equivalent to finding of guilt for the purpose of § 4A1.2(f).

241. Proposed Amendment: The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 8 by deleting "4A1.2(e)" and inserting in lieu thereof "4A1.2 (d)(2) and (e)" and by inserting the following new sentence immediately after the first sentence:

"As used in § 4A1.2 (d) and (e), the term 'commencement of the instant offense' includes any relevant conduct. See § 1B1.3 (Relevant Conduct).".

Reason for Amendment: The purposes of this amendment are to correct a clerical error by inserting a reference to § 4A1.2(d)(2), and to clarify that "commencement of the instant offense" includes any relevant conduct.

242. Clarification of Definitions: The Commission has received feedback from probation officers and others that certain definitions in this section (particularly the definition of "Sentence of Imprisonment" in Application Note 2 and "Related Offenses" in Application Note 3) are difficult to apply in certain cases. The Commission seeks comment on how these definitions, or any other of the other definitions or instructions in this section can be improved.

§ 4B1.1 Career Offender

243. *The Career Offender Guideline:* In 28 U.S.C. 994(h), the Commission was directed to "assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants" if the defendant is convicted of a felony that is a "crime of violence" or a drug trafficking offense and has two such prior convictions. In the initial guidelines, the Commission interpreted this directive literally. Section 4B1.1 (Career Offender) currently specifies in essence that a defendant who is a career offender (as defined in 28 U.S.C. 994(h)) be sentenced to a term of imprisonment of from about 12% below the statutory maximum to about 10% above the statutory maximum[5] for the "crime of violence" or

[5] The term of imprisonment could exceed the statutory maximum for a single count in the event of convictions on multiple counts.

drug trafficking offense of which he is convicted. For example, for an armed robbery conviction, the defendant would be sentenced to approximately 22 to 27 years in prison; for unarmed robbery, 17.5 to 22 years; and, for selling ten grams of heroin, approximately 22 to 27 years. If the defendant is convicted of more than one count of a crime of violence or drug trafficking offense, the count having the highest maximum is used to determine the sentence.

This guideline has been criticized on a number of grounds, including: (1) Sentences based only on the statutory maximum ignore significant variations in the seriousness of the actual offense conduct and therefore (a) are unjust and (b) provide no marginal deterrence; (2) the sentence is frequently excessive in relation to the seriousness of the actual offense conduct; (3) the sentence is too heavily dependent on the charge of conviction for the instant offense and prior offenses (e.g., a prior robbery offense resulting in a state robbery conviction pursuant to a plea agreement for a sentence of probation counts as a prior conviction of a crime of violence, but a prior robbery offense resulting in negotiated plea to a grand larceny charge and imposition of a ten year prison term does not count as a prior conviction of a crime of violence. Thus, differences in plea negotiation practices among state courts can affect whether the career offender provision applies and result in a very large difference in the guideline range); (4) the distinction between the criminal records of offenders with a criminal history Category VI and those who are career offenders is insufficient to warrant such large differences in the resulting sentence; (5) the sentences are longer than are needed for incapacitation, and therefore waste prison space, which is in short supply and could be better used for other offenders; (6) prisons are not equipped to house the aged offenders who will be incarcerated as a result of this guideline; and (7) acceptance of responsibility has no impact on the guideline range, thus discouraging guilty pleas.

Critics assert that the flaw in the current guideline is that it embodies an overly literal reading of 28 U.S.C. 994(h). Senator Kennedy, the original author of this statutory directive, has recently observed that specific directions to the Commission must be read in conjunction with the general instructions to the Commission in the Sentencing Reform Act in order to avoid unjust results. The Senator singled out 28 U.S.C. 994(h) as one provision susceptible to producing inadvertently unjust or anomalous results.

The Commission is considering whether and, if so, how to revise the Career Offender guideline. Three options have been preliminarily proposed. The first two would create a new criminal history category, Category VII, for career offenders; the sentence would be tied to the offense level for the underlying offense. The third is similar to the current approach, but would eliminate all judicial discretion.

Under option 1, the sentences would start out 5 levels higher than for Criminal History Category VI, and generally would be about 2 to 4 years longer than for Category VI. However, at high offense levels, where sentences exceed 10 years, category VII would gradually merge with Category VI. In addition, Category VII would not apply if Category VI would suffice to incarcerate the defendant beyond the age of 50, because (1) criminal careers generally do not extend beyond the age of 50, but if they do, the offenses committed tend to be less serious than those committed by younger offenders; and (2) criminality is not a good predictor of future criminality beyond 10–15 years. This proposal represents a first attempt to make more efficient use of the career offender provision for incapacitation, while giving considerable weight to the seriousness of the crime(s) committed.

Under option 2, the sentences would simply be approximately double those for criminal history Category VI. Thus, the sentences for career offenders would depend only on the seriousness of the underlying offense conduct. At high offense levels, the sentences quickly reach 30 years to life. The sentencing ranges for options I and 2 would be as follows:

Category VII

	Option I	Option 2
1.	9–15	15–21.
2.	12–18	18–24.
3.	16–22	21–27.
4.	20–26	24–30.
5.	24–30	27–33.
6.	28–35	30–37.
7.	32–40	33–41.
8.	36–45	37–46.
9.	40–50	41–51.
10.	44–55	46–57.
11.	48–60	51–63.
12.	52–65	57–71.
13.	56–70	63–78.
14.	61–76	70–87.
15.	66–82	77–96.
16.	72–90	84–105.
17.	80–100	92–115.
18.	88–110	100–125.
19.	96–120	110–127.
20.	104–130	120–150.
21.	112–140	130–162.
22.	120–150	140–175.
23.	130–162	151–188.
24.	140–175	165–205.
25.	150–187	180–220.
26.	160–200	195–245.
27.	170–212	210–262.
28.	180–225	235–293.
29.	190–237	262–327.
30.	200–250	292–365.
31.	212–265	324–405.
32.	224–280	360-life.
33.	240–300	360-life.
34.	262–327	360-life.
35.	292–365	360-life.
36.	324–405	360-life.
37.	360-life	360-life.
38.	360-life	360-life.
39.	360-life	360-life.
40.	360-life	360-life.
41.	360-life	360-life.
42.	360-life	360-life.
43.	life	life.

Option 3 would be like the current guideline, except that the sentence would always be set at the statutory maximum.

Illustrations of the effect of the current guideline and of these three options follow:

	Current career offender	Current category VI	Option 1	Option 2	Option 3
One unarmed bank robbery	[1] 210–262	63–78	96–120	110–127	240.
Two unarmed bank robberies	210–262	77–96	112–140	130–162	240.
One unarmed bank robbery, with serious injury	210–262	92–115	130–162	151–188	240.
One armed bank robbery	[1] 262–327	84–105	120–150	140–175	300.
Two armed bank robberies	262–327	100–125	140–175	165–205	300.
One armed bank robbery, with serious injury	[1] 262–327	130–162	160–200	195–245	300.
Assault fed ofcr (wpn, no inj)	[1] 100–125	77–96	[1] 112–140	[1] 130–162	120.
Robbery, U.S. Prop. (armed)	[1] 151–188	77–96	112–140	130–162	180.
Sale of heroin [2] (10 grams)	262–327	46–57	72–90	80–104	360.
Sale of heroin [2] (100 grams)	360-life	120–150	160–200	195–245	life.

	Current career offender	Current category VI	Option 1	Option 2	Option 3
Sale of heroin [2] (1 kilogram)	360-life	210-262	224-280	360-life	life.
Sale of heroin [2] (100 kilograms)	360-life	324-405	324-405	360-life	life.

[1] Indicates sentences that exceed the statutory maximum.
[2] Assumes at least one prior drug trafficking conviction; otherwise statutory maximums (and hence first and last columns) are lower.

These options merely illustrate possible approaches that could be employed, and are published to help focus comment. The Commission solicits comment addressing the purposes underlying 28 U.S.C. 994(h), the extent of the Commission's authority in implementing it, whether this guideline should be revised at this time, and how best to do so.

244. *Proposed Amendment:* The Commentary to § 4B1.1 captioned "Application Note" is amended by inserting as a new Note:

"2. 'Offense Statutory Maximum' refers to the maximum term of imprisonment authorized for the offense of conviction that is a crime of violence or serious drug offense. If more than one count of conviction is of a crime of violence or controlled substance offense, use the maximum authorized term of imprisonment for the count that authorizes the greatest maximum term of imprisonment.",

and in the caption by deleting "Note" and inserting in lieu thereof "Notes".

The Commentary to § 4B1.1 captioned "Background" is amended by deleting "128 Cong. Rec. 12792, 97th Cong., 2d Sess. (1982) ('Career Criminals' amendment No. 13 by Senator Kennedy), 12796 (explanation of amendment), and 129798 (remarks by Senator Kennedy)" and inserting in lieu thereof: "128 Cong. Rec. 26, 511–12 (1982) (text of 'Career Criminals' amendment by Senator Kennedy), 26, 515 (brief summary of amendment), 26, 517–18 (statement of Senator Kennedy)".

Reason for Amendment: The purposes of this amendment are to clarify the operation of the guideline, and to provide a citation to the more readily available edition of the Congressional Record.

§ 4B1.2 Definitions.

245. *Proposed Amendment:* Section 4B1.2 is amended by deleting "is defined under 18 U.S.C. 16" and inserting in lieu thereof:

"means any offense under federal or state law punishable by imprisonment for a term exceeding one year that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(ii) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.".

Section 4B1.2 is amended by deleting "identified in 21 U.S.C. 841, 845(b), 856, 952(a), 955, 955(a), 959; and similar offenses" and inserting in lieu thereof:

"under a federal or state law prohibiting the manufacture, import, export, or distribution of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, or distribute.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended by deleting:

"1. 'Crime of violence' is defined in 18 U.S.C. 16 to mean an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that by its nature involves a substantial risk that physical force against the person or property of another may be used in committing the offense. The Commission interprets this as follows: murder, manslaughter, kidnapping, aggravated assault, extortionate extension of credit, forcible sex offenses, arson, or robbery are covered by this provision. Other offenses are covered only if the conduct for which the defendant was specifically convicted meets the above definition. For example, conviction for an escape accomplished by force or threat of injury would be covered; conviction for an escape by stealth would not be covered. Conviction for burglary of a dwelling would be covered; conviction for burglary of other structures would not be covered.

2. 'Controlled substance offense' includes any federal or state offense that is substantially similar to any of those listed in subsection (2) of the guideline. These offenses include manufacturing, importing, distributing, dispensing, or possessing with intent to manufacture, import, distribute, or dispense, a controlled substance (or a counterfeit substance). This definition also includes aiding and abetting, conspiring, or attempting to commit such offenses, and other offenses that are substantially equivalent to the offenses listed.",

and inserting in lieu thereof the following:

"1. The terms 'crime of violence' and 'controlled substance offense' include aiding and abetting, conspiring, and attempting to commit such offenses.

2. 'Crime of violence' includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included where (A) that offense has as an element the use, attempted use, or threatened use, of physical force against the person of another, or (B) the conduct set forth in the count of which the defendant was convicted included use of explosives or, by its nature, presented a serious potential risk of physical injury to another.".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 4 by deleting "§ 4A1.2(e) (Applicable Time Period), § 4A1.2(h) (Foreign Sentences), and § 4A1.2(j) (Expunged Convictions)" and inserting in lieu thereof "§ 4A1.2 (Definitions and Instructions for Computing Criminal History)", and by deleting "Also applicable is the Commentary to § 4A1.2 pertaining to invalid convictions.".

Reason for Amendment: The purpose of this amendment is to clarify the coverage of this guideline.

Additional Explanatory Statement: Experience has demonstrated a need to clarify the definitions of a crime of violence and controlled substance offense used in this guideline. The proposed amendment substitutes comparable but clearer definitions of crime of violence and controlled substance offense. The definition of crime of violence is derived from 18 U.S.C. 924(e). In addition, the proposed amendment clarifies that all pertinent definitions and instructions in § 4B1.2 apply to this section.

* * * * *

§ 4B1.3 Criminal Livelihood

246. *Proposed Amendment:* Section 4B1.3 is amended by deleting "from which he derived a substantial portion of his income" and inserting in lieu thereof "engaged in as a livelihood".

The Commentary to § 4B1.3 captioned "Application Note" is amended by deleting "Note" and inserting in lieu thereof "Notes", and by inserting as an additional Note:

"2. 'Engaged in as a livelihood' means that (1) the defendant derived income from the pattern of criminal conduct that in any twelve-month period exceeded 2,000 times the hourly minimum wage

under federal law (currently 2,000 × the hourly minimum wage under Federal law is $6,700); and (2) the totality of circumstances shows that such criminal conduct was the defendant's primary occupation in that twelve-month period (e.g., the defendant engaged in criminal conduct rather than regular, legitimate employment; or the defendant's legitimate employment was merely a front for his criminal conduct).".

The Commentary to § 4B1.3 captioned "Application Notes" is amended in Note 1 by deleting "This guideline is not intended to apply to minor offenses.".

The Commentary to § 4B1.3 captioned "Background" is amended by deleting "proportion" and inserting in lieu, thereof "portion".

Reason for Amendment: The purpose of this amendment is to provide a better definition of the intended scope of this enhancement.

Additional Explanatory Statement: Feedback from probation officers and others has pointed out that the current guideline is subject to varying interpretation. Compare, for example, U.S. v. Kerr, 686 F. Supp. 1174 (W.D. Penn. 1988) with U.S. v. Rivera, 694 F. Supp. 1105 (S.D. NY 1988). The first prong of the proposed definition in application Note 2 above is derived from former 18 U.S.C. 3575, the provision from which the statutory instruction underlying this guideline (28 U.S.C. 994(i)(2)) was itself derived.

Chapter Five, Part A—Sentencing Table

247. *Proposed Amendment:* Chapter 5, Part A is amended in the Sentencing Table by deleting "0–1, 0–2, 0–3, 0–4, and 0–5" wherever it appears, and inserting in each instance "0–6".

Reason for Amendment: This amendment provides that the maximum of the guideline range is six months wherever the minimum of the guideline range is zero months. Related amendment: 257 (§ 5E4.2).

Additional Explanatory Statement: The court has discretion to impose a sentence of up to 6 months or a $5,000 fine for a Class B misdemeanor (Class B or C misdemeanors and infractions are not covered by the guidelines; see § 1B1.9). It appears anomalous that the Commission guidelines allow less discretion for certain felonies and Class A misdemeanors. In fact, in certain cases, a plea to a reduced charge of a Class B misdemeanor could result in a higher potential sentence because the sentence for the felony or Class A misdemeanor might be restricted to less than 6 months by the guidelines. This can happen when the Sentencing Table provides a guideline range of 0–1 month, 0–2 months, 0–3, 0–4, or 0–5 months. These very narrow ranges are not required by statute, which allows a 6 month guideline range in such cases.

The Commission proposes to remove this anomaly by amending the guideline table to provide that whenever the lower limit of the guideline range is 0 months, the upper limit of the guideline range is six months.

There is a similar anomaly in the Fine Table at § 5E4.2, in that the maximum of the fine table is, in certain cases, less than the $5,000 authorized for petty offenses. Providing a fine range of $100–$5,000 for an offense level of 3 or less, and $250–$5,000 for an offense level of 4 or 5, would remove this anomaly. Moreover, because the guidelines now cover only Class A misdemeanors and felonies, an increase in the minimum fine guideline to $100 is proposed.

§ 5B1.3 Conditions of Probation

248. *Proposed Amendment:* Section 5B1.3(c) is amended by inserting immediately before the period at the end of the first sentence the following:

", unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under 18 U.S.C. 3563(b)".

Reason for Amendment: The purpose of this amendment is to conform the guideline to a statutory revision.

249. *Proposed Amendment:* Section 5B1.3(a) is amended by inserting at the end "The court shall also impose a condition that the defendant not possess illegal controlled substances. 18 U.S.C. 3563(a)(3).".

Section 5B1.3 is amended by inserting the following as Commentary:

"**Commentary**

A broader form of the condition required under 18 U.S.C. 3563(a)(3) (pertaining to possession of controlled substances is set forth as recommended condition (7) at Section 5B1.4 (Recommended Conditions of Probation and Supervised Release).".

Reason for Amendment: This amendment references a mandatory condition of probation added by section 7307 of the Omnibus Anti-Drug Abuse Act. Related amendment: 253 (§ 5D3.3).

§ 5C2.1 Imposition of a Term of Imprisonment

250. *Proposed Amendment:* Section 5C2.1(e) is amended by deleting "Thirty days" and inserting in lieu thereof "One day", by deleting "one month" wherever it appears and inserting in lieu thereof in each instance "one day", and by deleting "One month" and inserting in lieu thereof "One day".

Reason for Amendment: The purpose of this amendment is to enhance the internal consistency of the guidelines.

Chapter Five, Parts C, D, E, and F

251. *Proposed Amendment:* Sections 5C2.1, 5D3.1, 5D3.2, 5D3.3, 5E4.1, 5E4.2, 5E4.3, 5E4.4, 5F5.1, 5F5.2, 5F5.3, 5F5.4, and 5F5.5 are amended by deleting the number immediately following each letter in the section and inserting in lieu thereof "1" in each instance.

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

§ 5D3.3 Conditions of Supervised Release

252. *Proposed Amendment:* Section 5D3.3 is amended by deleting subsection (b) and inserting in lieu thereof the following:

"(b) The court may impose other conditions of supervised release, to the extent that such conditions are reasonably related to (1) the nature and circumstances of the offense and the history and characteristics of the defendant, and (2) the need for the sentence imposed to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. 3553(a)(2) and 3583(d).".

Reason for Amendment: The purposes of this amendment are to clarify the guideline and conform it to the statute as amended by Section 7108 of the Omnibus Anti-Drug Abuse Act of 1988.

253. *Proposed Amendment:* Section 5D3.3(a) is amended by inserting at the end "The court shall also impose a condition that the defendant not possess illegal controlled substances. 18 U.S.C. 3563(a)(3).".

The Commentary to 5D3.3 captioned "Background" is amended by inserting as the last sentence: "A broader form of the condition required under 18 U.S.C. 3563(a)(3) (pertaining to possession of controlled substances) is set forth as recommended condition (7) at Section 5B1.4 (Recommended Conditions of Probation and Supervised Release).".

Reason for Amendment: This amendment references a mandatory condition of supervised release added by section 7307 of the Omnibus Anti-Drug Abuse Act of 1988. Related amendment: 249 (§ 5B1.3).

§ 5E4.1 Restitution

254. *Proposed Amendment:* Section 5E4.1 is amended by inserting the following as an additional subsection:

"(c) With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution. 18 U.S.C. 3663(b)(4).".

Reason for Amendment: The purpose of this amendment is to insert language previously contained in § 5F5.3(b) where it had been erroneously placed. Related amendment: 261 (§ 5F5.3).

255. *Proposed Amendment:* Section 5E4.1 is amended in the Commentary entitled "Background" by deleting:

"See S. Rep. No. 225, 98th Cong., 1st Sess. 95–96.", and inserting in lieu thereof:

"See 18 U.S.C. 3563(b)(3) as amended by Section 7110 of Pub. L. No. 100–690 (1988).".

Reason for Amendment: This amendment replaces a reference to legislative history with a citation to a revised statute. Section 7110 of the Omnibus Anti-Drug Abuse Act of 1988 confirms the authority of a sentencing court to impose restitution as a condition of probation. Previously, such authority was inferred from 18 U.S.C. 3563(b)(20) (defendant may be ordered to "satisfy such other conditions as the court may impose") and from legislative history.

§ 5E4.2 Fines for Individual Defendants

256. *Proposed Amendment:* Section 5E4.2(a) is amended by deleting:

"If the guideline for the offense in Chapter Two prescribes a different rule for imposing fines, that rule takes precedence over this subsection.".

Section 5E4.2(b) is amended by inserting at the end the following additional sentence:

"If, however, the guideline for the offense in Chapter Two provides a specific rule for imposing a fine, that rule takes precedence over subsection (c) of this section.".

Reason for Amendment: The purpose of this amendment is to clarify the guideline. The last sentence of current § 5E4.2(a) is in the wrong place. This amendment moves the content of this sentence to subsection (b) where it belongs.

257. *Proposed Amendment:* Section 5E4.2(c)(3) is amended by deleting:

"1	$25	$250
2–3	$100	$1,000
4–5	$250	$2,500,"

and inserting in lieu thereof:

"3 and below.....$100–$5,000
4–5.....$250–$5,000".

Reason for Amendment: This amendment revises the fine table for offense levels 5 and below. Related amendment: 247 (Chapter Five, Part A).

Additional Explanatory Statement: See additional explanatory statement at the proposed amendment to Chapter Five, Part A (amendment 247).

258. *Fines and Cost of Imprisonment:* The guidelines require the court to impose a fine on every defendant who possesses the ability to pay or is likely to become able to pay. The court is required to impose an additional fine sufficient to reimburse the government for the cost of imprisonment, probation or supervised release. The Commission solicits public comment concerning the appropriateness of these provisions. Of particular interest is the manner in which the fine guidelines have been applied during the year that the guidelines have been in effect. Public comment on these subjects will also assist the Commission to fulfill its statutory mandate to study the feasibility of requiring defendants to pay for the cost of punishment. (Section 7301 of the Omnibus Anti-Drug Abuse Act of 1988).

§ 5E4.3 Special Assessments

259. *Proposed Amendment:* The Commentary to Section 5E4.3 captioned "Background" is amended in the first paragraph by inserting at the end:

"Under the Victims of Crime Act, as amended by section 7085 of the Omnibus Anti-Drug Abuse Act of 1988, the court is required to impose assessments in the following amounts with respect to offenses committed on or after November 18, 1988.

Individuals:

$5, if the defendant is an individual convicted of an infraction or a Class C misdemeanor;

$10, if the defendant is an individual convicted of a Class B misdemeanor;

$25, if the defendant is an individual convicted of a Class A misdemeanor;

$50, if the defendant is an individual convicted of a felony.

Organizations:

$50, if the defendant is an organization convicted of a Class B misdemeanor;

$125, if the defendant is an organization convicted of a Class A misdemeanor; and

$200, if the defendant is an organization convicted of a felony. 18 U.S.C. 3013.",

and in the second paragraph by deleting "The Act requires the court" and inserting in lieu thereof "With respect to offenses committed prior to November 18, 1988, the court is required".

Reason for Amendment: The purpose of this amendment is to conform the commentary to the statute as amended by Section 7085 of the Omnibus Anti-Drug Abuse Act of 1988.

§ 5F5.2 Home Detention

260. *Use of Home Dentention as an Alternative to Imprisonment:* Section 7305 of the Omnibus Anti-Drug Abuse Act of 1988 provides that home detention may be imposed as a condition of probation, parole and supervised release, but only as an alternative to incarceration. The guidelines do not permit home detention to be imposed as a substitute for imprisonment (see § 5C2.1(e) and Application Note 5 of the Commentary to § 5C2.1). The Commission seeks public comment on the question of whether the policy reflected in the existing guidelines should or should not be revised to accomodate the provision in § 7305 in light of the existing guideline distinction between home detention, community or intermittent confinement, and imprisonment. Comment would also be welcomed on the question of whether home detention, if substituted for imprisonment, should be done so as an exact equivalent (i.e., one day for one day), or if some different ratio is appropriate, and whether electronic monitoring should be required to supplement probation officer enforcement of this condition. Finally, comment is invited on the question of whether home confinement should be limited to certain categories of offenses and offenders.

§ 5F5.3 Community Service

261. *Proposed Amendment:* Section 5F5.3(a) is amended by deleting "(a)", and by inserting "and sentenced to probation" immediately following "felony".

Section 5F5.3(b) is amended by deleting:

"(b) With the consent of the victim of the offense, the court may order a defendant to perform services for the benefit of the victim in lieu of monetary restitution. 18 U.S.C. 3663(b)(4).".

Reason for Amendment: The purpose of this amendment is to correct an erroneous statement in § 5F5.3(a) and to remove § 5F5.3(b) which deals with restitution and not community service and, thus, should appear at § 5E4.1. A related amendment inserts the deleted language at § 5E4.1 (Restitution). Related amendment: 254 (§ 5E4.1).

§ 5F5.4 Order of Notice to Victims

262. *Proposed Amendment:* The Commentary to § 5F5.4 captioned "Background" is amended by deleting:

"The legislative history indicates that, although the sanction was designed to provide actual notice to victims, a court might properly limit notice to only those victims who could be most readily identified, if to do otherwise would unduly prolong or complicate the sentencing process.".

Reason for Amendment: The purpose of this amendment is to delete an unnecessary statement that could be subject to misinterpretation.

§ 5F5.5 Occupational Restrictions

263. *Proposed Amendment:* Section 5F5.5(a) is amended by deleting:

"(2) there is a risk that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted; and

(3) imposition of such a restriction is reasonably necessary to protect the public.",

and inserting in lieu thereof:

"(2) imposition of such a restriction is reasonably necessary to protect the public because there is reason to believe that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted.",

and by inserting "and" at the end of subsection (a)(1).

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

§ 5G1.1 Sentencing on a Single Count of Conviction

264. *Proposed Amendment:* Section 5G1.1 and the accompanying Commentary are amended by deleting:

"(a) If application of the guidelines results in a sentence above the maximum authorized by statute for the offense of conviction, the statutory maximum shall be the guideline sentence.

(b) If application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence.

(c) In any other case, the sentence imposed shall be the sentence as determined from application of the guidelines.

Commentary

If the statute requires imposition of a sentence other than that required by the guidelines, the statute shall control. The sentence imposed should be consistent with the statute but as close as possible to the guidelines.", and inserting in lieu thereof:

"(a) Where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence.

(b) Where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence.

(c) In any other case, the sentence may be imposed at any point within the applicable guideline range, provided that the sentence—

(1) is not greater than the statutorily authorized maximum sentence, and

(2) is not less than any statutorily required minimum sentence.

Commentary

This section describes how the statutorily authorized maximum sentence, or a statutorily required minimum sentence, may affect the determination of a sentence under the guidelines. For example, if the applicable guideline range is 51–63 months and the maximum sentence authorized by statute for the offense of conviction is 48 months, the sentence required by the guidelines under subsection (a) is 48 months; a sentence of less than 48 months would be a guideline departure. If the applicable guideline range is 41–51 months and there is a statutorily required minimum sentence of 60 months, the sentence required by the guidelines under subsection (b) is 60 months; a sentence of more than 60 months would be a guideline departure. If the applicable guideline range is 51–63 months and the maximum sentence authorized by statute for the offense of conviction is 60 months, the guideline range is restricted to 51–60 months under subsection (c).".

Reason for Amendment: The purpose of this amendment is to clarify the guideline.

§ 5G1.2 Sentencing on Multiple Counts of Conviction

265. *Proposed Amendment:* The Commentary to § 5G1.2 is amended by inserting the following as an additional paragraph immediately following the first paragraph:

"This section applies to multiple counts of conviction (1) contained in the same indictment or information, or (2) contained in different indictments or informations for which sentences are to be imposed at the same time or in a consolidated proceeding.".

Reason for Amendment: The purpose of this amendment is to clarify that this guideline applies in the case of separate indictments that are consolidated for purposes of sentencing.

266. *Proposed Amendment:* The Commentary to § 5G1.2 is amended in the second paragraph by deleting "any combination of concurrent and consecutive sentences that produces the total punishment may be imposed" and inserting in lieu thereof "consecutive sentences are to be imposed to the extent necessary to achieve the total punishment.".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

§ 5G1.3 Convictions on Counts Related to Unexpired Sentences

267. *Proposed Amendment:* Section 5G1.3, and the Commentary thereto, is deleted in its entirety as follows:

"§ 5G1.3 Convictions on Counts Related to Unexpired Sentences

If at the time of sentencing, the defendant is already serving one or more unexpired sentences, then the sentences for the instant offense(s) shall run consecutively to such unexpired sentences, unless one or more of the instant offenses(s) arose out of the same transactions or occurrences as the unexpired sentences. In the latter case, such instant sentences and the unexpired sentences shall run concurrently, except to the extent otherwise required by law.

Commentary

This section reflects the statutory presumption that sentences imposed at different times ordinarily run consecutively. See 18 U.S.C. 3584(a). This presumption does not apply when the new counts arise out of the same transaction or occurrence as a prior conviction.

Departure would be warranted when independent prosecutions produce anomalous results that circumvent or defeat the intent of the guidelines.",

and the following inserted in lieu thereof:

"§ 5G1.3 Imposition of a Sentence on a Defendant Serving an Unexpired Term of Imprisonment

If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status), the sentence for the instant offense shall be imposed to run consecutively to the unexpired term of imprisonment.

Commentary

Under this guideline, the court shall impose a consecutive sentence where the instant offense (or any part thereof) was committed while the defendant was serving an unexpired term of imprisonment.".

Reason for Amendment: This amendment provides a requirement for a consecutive sentence for the instant offense when the instant offense was committed while the defendant was serving a term of imprisonment.

Additional Explanatory Statement: This amendment specifies circumstances in which a consecutive sentence is required. Erroneous language in the Commentary to this guideline concerning 18 U.S.C. 3584(a) is deleted. The Commission seeks comment as to what approach should be taken concerning sentences imposed at different times not covered by the revised provision.

§ 5K1.1 Substantial Assistance to Authorities (Policy Statement)

268. *Proposed Amendment:* Section 5K1.1 is amended by deleting "made a good faith effort to provide" and inserting in lieu thereof "provided".

Reason for Amendment: The purpose of this amendment is to clarify this policy statement.

Additional Explanatory Statement: The purpose of this amendment is to clarify the Commission's intent that departures under this policy statement be based upon the provision substantial assistance. The existing policy statement could be interpreted requiring only a willingness to provide such assistance.

269. *Proposed Amendment:* Section 5K1.1(a) is amended in the first sentence by deleting "conduct".

Reason for Amendment: The purpose of this amendment is to make an editorial correction.

§ 5K1.2 Refusal to Assist (Policy Statement)

270. *Proposed Amendment:* The Commentary to § 5K1.2 captioned "Background" is amended by deleting "Refusal to assist authorities based upon continued involvement in criminal activities and association with accomplices" and inserting in lieu thereof "A defendant's motives for refusing to assist authorities".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

Chapter Five, Part K, Subpart 2 (General Provisions)

271. *Proposed Amendment:* Chapter Five, Part K is amended by adding at the end:

"§ 5K2.15 Terrorism (Policy Statement)

If the defendant committed the offense in furtherance of a terroristic action, the court may increase the sentence above the authorized guideline range.".

Reason for Amendment: This amendment adds a specific policy statement concerning consideration of an upward departure when the offense is committed for a terroristic purpose. This amendment does not make a substantive change. Such conduct is currently included in the broader policy statement at § 2K2.9 (Criminal Purpose).

§ 6A1.1. Presentence Report

272. *Proposed Amendment:* Section 6A1.1 is amended in the title by inserting at the end "(Policy Statement)".

Reason for Amendment: The purpose of this amendment is to designate § 6A1.1 as a policy statement.

Additional Explanatory Statement: Designation of this section as a policy statement is more consistent with the nature of the subject matter. Related amendment: 274 (§ 6A1.3).

§ 6B1.2 Standards for Acceptance of Plea Agreements (Policy Statement)

273. *Proposed Amendment:* The Commentary to § 6B1.2 is amended in the second paragraph by deleting "and does not undermine the basic purposes of sentencing.", and inserting in lieu thereof "(i.e., that such departure is authorized by 18 U.S.C. 3553(b)). See generally Chapter 1, Part A (4)(b) (Departures).".

Reason for Amendment: The purpose of this amendment is to clarify the Commentary.

§ 6A1.3 Resolution of Disputed Factors

274. *Proposed Amendment:* Section 6A1.3 is amended in the title by inserting at the end "(Policy Statement)".

Reason for Amendment: The purpose of this amendment is to designate § 6A1.3 as a policy statement.

Additional Explanatory Statement: Designation of this section as a policy statement is more consistent with the nature of the subject matter. Related amendment: 272 (§ 6A1.1).

Appendix A—Statutory Index

275. *Proposed Amendment:* Appendix A (Statutory Index) is amended in the second sentence of the "Introduction" by deleting "conduct" and inserting in lieu thereof "nature of the offense conduct charged in the count", and by deleting "select" and inserting in lieu thereof "use"; and in the third sentence of the "Introduction" by deleting "the court is to apply" and inserting in lieu thereof "use", by deleting "which is", and by deleting "conduct for" and inserting in lieu thereof "nature of the offense conduct charged in the count of".

Reason for Amendment: The purpose of this amendment is to clarify the operation of the Statutory Index in relation to §§ 1B1.1 and 1B1.2(a).

276. *Proposed Amendment:* Appendix A is amended on the line beginning "18 U.S.C. 371" by inserting "2A2.1, 2D1.4," immediately before "2T1.9".

Reason for Amendment: The purpose of this amendment is to make the Statutory Index more comprehensive.

277. *Proposed Amendment:* Appendix A is amended by deleting ", 2A3.1" from the line beginning with "18 U.S.C. 113(a)".

Reason for Amendment: The purpose of this amendment is to correct a clerical error.

278. *Proposed Amendment:* Appendix A is amended by inserting as an additional paragraph at the end of the Introduction:

"The guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction. (See § 1B1.9.)".

Appendix A is amended by deleting:

"7 U.S.C. 52 ..... 2N2.1",
"7 U.S.C. 60 ..... 2N2.1",
"10 U.S.C. 847 ..... 2J1.1, 2J1.5",
"16 U.S.C. 198c ..... 2B1.1, 2B1.3, 2B2.3",
"16 U.S.C. 204c ..... 2B1.1, 2B1.3",
"16 U.S.C. 604 ..... 2B1.3",
"16 U.S.C. 606 ..... 2B1.1, 2B1.3",
"16 U.S.C. 668dd ..... 2Q2.1",
"16 U.S.C. 670j(a)(1) ..... 2B2.3",
"16 U.S.C. 676 ..... 2B2.3",
"16 U.S.C. 682 ..... 2B2.3",
"16 U.S.C. 683 ..... 2B2.3",
"16 U.S.C. 685 ..... 2B2.3",
"16 U.S.C. 689b ..... 2B2.3",
"16 U.S.C. 692a ..... 2B2.3",
"16 U.S.C. 694a ..... 2B2.3",
"18 U.S.C. 113(d) ..... 2A2.3",
"18 U.S.C. 113(e) ..... 2A2.3",
"18 U.S.C. 290 ..... 2F1.1",
"18 U.S.C. 402 ..... 2J1.1",
"18 U.S.C. 437 ..... 2C1.3",
"18 U.S.C. 1164 ..... 2B1.3",
"18 U.S.C. 1165 ..... 2B2.3",
"18 U.S.C. 1382 ..... 2B2.3",
"18 U.S.C. 1504 ..... 2J1.2",
"18 U.S.C. 1726 ..... 2F1.1",
"18 U.S.C. 1752 ..... 2B2.3",
"18 U.S.C. 1793 ..... 2P1.4",
"18 U.S.C. 1856 ..... 2B1.3",
"18 U.S.C. 1863 ..... 2B2.3",
"40 U.S.C. 193e ..... 2B1.1, 2B1.3",
"42 U.S.C. 1995 ..... 2J1.1",
"42 U.S.C. 2000h ..... 2J1.1",
"42 U.S.C. 4912 ..... 2Q1.3",
"47 U.S.C. 223 ..... 2G3.2".

Reason for Amendment: The purposes of this amendment are to clarify that the guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction, and to delete references to statutes that apply solely to such offenses. Related amendment: 15 (§ 1B1.9).

279. *Proposed Amendment:* Appendix A is amended by deleting:

"18 U.S.C. 1512 ..... 2J1.2",

And inserting in lieu thereof:

"18 U.S.C. 1512(a) 2A1.1, 2A1.2, 2A2.1,
18 U.S.C. 1512(b) 2A2.2, 2J1.2,
18 U.S.C. 1512(c) ..... 2J1.2".

Appendix A is amended by inserting the following statutes in the appropriate place according to statutory title and section number:

"18 U.S.C. 844(e) ..... 2A6.2",
"18 U.S.C. 1716C ..... 2B5.2",
"42 U.S.C. 7270b ..... 2B2.3",
"43 U.S.C. 1773(a) .....
(43 CFR 4140.1(b)(1)(i)) 2B2.3".

Appendix A is amended in the line beginning "18 U.S.C. 1028" by inserting "2L1.2, 2L2.1, 2L2.3 immediately following "2F2.2".

Reason for Amendment: The purpose of this amendment is to make the statutory index more comprehensive.

280. *Proposed Amendment:* Appendix A is amended in the line beginning "18 U.S.C. 1854" by deleting ", 2B2.3".

Reason for Amendment: The purpose of this amendment is to delete an incorrect reference.

281. *Proposed Amendment:* Appendix A is amended by inserting the following statute in the appropriate place according to statutory title and section number:

"21 U.S.C. ..... 2D1.10".

Reason for Amendment: The purpose of this amendment is to make the Statutory Index more comprehensive. Related amendment: 98 (§ 2D1.10).

282. *Proposed Amendment:* Appendix A is amended on the line beginning "18 U.S.C. 1464" by deleting "§ 2G3.1" and inserting in lieu thereof "§ 2G3.3" and by inserting the following statute in the appropriate place according to statutory title and section number:

"18 U.S.C. 1468 and 2G3.3".

Reason for Amendment: The purpose of this amendment is to reflect the creation of a new guideline. Related amendment: 128 (§ 2G3.3).

283. *Proposed Amendment:* Appendix A is amended by inserting the following statute in the appropriate place according to statutory title and section number:

Comment date: April 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

"18 U.S.C. ..... 2251A 2G2.3".

Explanation: The purpose of this amendment is to reflect the creation of a new offense guideline. Related amendment: 125 (§ 2G2.3).

284. *Proposed Amendment:* Appendix A is amended in the line beginning "47 U.S.C. 223" by deleting "47 U.S.C. 223" and inserting in lieu thereof "47 U.S.C. 223(b)(1)(A)".

Reason for Amendment: The purpose of this amendment is to conform the Statutory Index to the amendment to § 2G3.2 (Amendment 127).

285. *Proposed Amendment:* Appendix A is amended by inserting the following statutes in the appropriate place according to statutory title and section number:

"18 U.S.C. 709..... 2F1.1",
"18 U.S.C. 1460..... 2G3.1",
"18 U.S.C. 1466..... 2G3.1",
"18 U.S.C. 1516..... 2J1.2",
"18 U.S.C. 1958..... 2A2.1, 2F1.4",
"18 U.S.C. 1959..... 2E1.3",
"49 U.S.C. 1472(c)..... 2A5.2".

Reason for Amendment: The purpose of this amendment is to make the Statutory Index more comprehensive.

286. *Proposed Amendment:* Appendix A is amended on the line beginning "18 U.S.C. 844(h)" by inserting "(offenses committed prior to November 18, 1988), 2K1.7" immediately following "2K1.4".

Reason for Amendment: The purpose of this amendment is to reflect revision in the offense covered by 18 U.S.C. 844(h). Related amendments: 149 (§ 2K1.4); 152 (§ 2K1.7).

287. *Proposed Amendment:* Appendix A is amended in the line beginning "26 U.S.C. 7203" by inserting "2S1.3," immediately before "2T1.2".

Reason for Amendment: The purpose of this amendment is to make the Statutory Index more comprehensive. Related amendments: 186 (§ 2S1.3); 194 (§ 2T1.2).

288. *Proposed Amendment:* Appendix A is amended in the line beginning "18 U.S.C. 1005" by inserting ", § 2S1.3" immediately following "2F1.1".

Reason for Amendment: The purpose of this amendment is to make the statutory index more comphrehensive.

289. *Proposed Amendment:* Appendix A is amended by inserting the following statute in the appropriate place according to statutory title and section number:

"18 U.S.C. 247..... 2H1.3",
"18 U.S.C. 930..... 2K2.5".

Reason for Amendment: The purpose of this amendment is to make the statutory index more comprehensive. Related amendments: 129 (§ 2H1.3); 158 (§ 2K2.5).

Clerical Errors in References

290. *Proposed Amendment:* The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 3 by deleting "at sentencing)" and inserting in lieu thereof "in Imposing Sentence)".

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 4 by deleting "(Assault)" and inserting in lieu thereof "(Aggravated Assault)".

The Commentary to § 2A5.2 captioned "Background" is amended by inserting "or Aboard" immediately following "Materials While Boarding".

The Introductory Commentary to Chapter 2, Part B is amended by deleting "Order and".

The Commentary to § 2R1.1 captioned "Application Notes" is amended in Note 7 by inserting "Category" immediately following "Criminal History".

The Commentary to § 2T1.4 captioned "Application Notes" is amended in Note 3 by inserting "Use of" immediately before "Special Skill".

The Commentary to § 3B1.4 is amended by deleting "(Role in the Offense)" the first time it appears and inserting in lieu thereof "(Aggravating Role)", and by deleting "(Role in the Offense)" the second time it appears and inserting in lieu thereof "(Mitigating Role)".

The Commentary to § 3D1.3 captioned "Application Notes" is amended in the last sentence of Note 4 by deleting "Loss or Damage" and inserting in lieu thereof "Damage or loss".

Reason for Amendment: The purpose of this amendment is to correct clerical errors in various cross-references.

[FR Doc. 89-4715 Filed 3-2-89; 8:45 am]
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federal register

Friday
March 3, 1989

Part III

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for December 1988

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53113; FRL-3525-2]

Premanufacture Notices; Monthly Status Report for December 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for December 1988.

Nonconfidential portions of the PMNs and exemption request may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53113]" and the specific PMN and exemption request number should be sent to: Document Control Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room 201 East Tower, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during December; (b) PMNs received previous and still under review at the end of December; (c) PMNs for which the notice review period has ended during December; (d) chemical substances for which EPA has received a notice of commencement to manufacture during December; and (e) PMNs for which the review period has been suspended. Therefore, the December 1988 PMN Status Report is being published.

Date: February 13, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report December 1988

I. 64 Premanufacture Notices and Exemption Requests Received During the Month:

PMN No.

P 89-0166 P 89-0168 P 89-0169 P 89-0170
P 89-0171 P 89-0172 P 89-0173 P 89-0174
P 89-0175 P 89-0176 P 89-0177 P 89-0178
P 89-0179 P 89-0180 P 89-0181 P 89-0182
P 89-0183 P 89-0184 P 89-0185 P 89-0186
P 89-0187 P 89-0188 P 89-0189 P 89-0190
P 89-0191 P 89-0192 P 89-0193 P 89-0194
P 89-0195 P 89-0196 P 89-0197 P 87-0198
P 89-0204 P 89-0205 P 89-0206 P 89-0207
P 89-0208 P 89-0209 P 89-0210 P 89-0211
P 89-0214 P 89-0215 P 89-0216 P 89-0217
P 89-0218 P 89-0219 P 89-0220 P 89-0221
P 89-0222 P 89-0223 P 89-0224 P 89-0225
P 89-0227 P 89-0228 P 89-0229 P 89-0230
Y 89-0037 Y 89-0038 Y 89-0039 Y 89-0040
Y 89-0041 Y 89-0042 Y 89-0043 Y 89-0044
Y 89-0045

II. 488 Premanufacture Notices Received Previously and Still Under Review at the End of the Month:

PMN No.

P 83-0669 P 85-0216 P 85-0535 P 85-0536
P 85-0619 P 85-0718 P 85-0941 P 86-0065
P 86-0066 P 86-0067 P 86-0294 P 86-0295
P 86-0592 P 86-1078 P 86-1189 P 86-1235
P 86-1602 P 86-1603 P 86-1604 P 86-1607
P 87-0057 P 87-0058 P 87-0059 P 87-0068
P 87-0105 P 87-0197 P 87-0198 P 87-0199
P 87-0200 P 87-0201 P 87-0323 P 87-0770
P 87-0794 P 87-0930 P 87-0931 P 87-0963
P 87-1028 P 87-1066 P 87-1104 P 87-1192
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Y 88-0325 Y 88-0326 Y 88-0352 Y 88-0353
Y 88-0354 Y 89-0011 Y 89-0012 Y 89-0016
Y 89-0017 Y 89-0018 Y 89-0019 Y 89-0020
Y 89-0024 Y 89-0026 Y 89-0027 Y 89-0028
Y 89-0029 Y 89-0030 Y 89-0031 Y 89-0032

III. 664 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory).

PMN No.

P 87-0090 P 87-0326 P 87-0930 P 87-0931
P 88-0388 P 88-0715 P 88-1109 P 88-1205
P 88-1219 P 88-1293 P 88-1367 P 88-1611
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P 88-1934 P 88-1935 P 88-1936 P 88-1939
P 88-1941 P 88-1942 P 88-1943 P 88-1944
P 88-1945 P 88-1946 P 88-1947 P 88-1948
P 88-1949 P 88-1950 P 88-1951 P 88-1952
P 88-1953 P 88-1954 P 88-1955 P 88-1957
P 88-1959 P 88-1960 P 88-1961 P 88-1962
P 88-1963 P 88-1964 P 88-1965 P 88-1966
P 88-1967 P 88-1968 P 88-1969 P 88-1970
P 88-1971 P 88-1972 P 88-1973 P 88-1974
P 88-1976 P 88-1977 P 88-1978 P 88-1979
P 88-1981 P 88-1983 P 88-1986 P 88-1987
P 88-1988 P 88-1989 P 88-1990 P 88-1991
P 88-1992 P 88-1993 P 88-1994 P 88-1996
P 88-1997 P 88-1998 P 88-2003 P 88-2004
P 88-2005 P 88-2006 P 88-2007 P 88-2008
P 88-2010 P 88-2011 P 88-2012 P 88-2013
P 88-2014 P 88-2015 P 88-2016 P 88-2017
P 88-2018 P 88-2019 P 88-2020 P 88-2021
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P 89-0161 P 89-0162 P 89-0163 P 89-0164
P 89-0165 P 89-0212 P 89-0213 Y 89-0030
Y 89-0033 Y 89-0034 Y 89-0035 Y 89-0036

IV. 37 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 85-0356	G Alcohol sulfate, lithium salt	Apr. 15, 1985.
P 85-0910	G Aliphatic, aromatic copolyester	Oct. 5, 1985.
P 86-0411	G Substituted alkyl benzotriazole	Nov. 17, 1988.
P 86-0412	G Substituted alkyl benzotriazole	Nov. 17, 1988.
P 86-1138	Substituted naphthalene disazo dye	Jan. 23, 1987.
P 86-1139	G Substituted naphthalene trisazo dye	Jan. 23, 1987.
P 86-1191	G 5-acetyl-1,2,3,4-tetrahydronaphthalene	Oct. 13, 1988.
P 86-1319	G (Halo substituted phenol) substituted aryl)-butan amide	Nov. 18, 1988.
P 86-1440	G C.I. disperse yellow 149	Nov. 2, 1988.
P 86-1739	G Acrylylalkyl substituted benzenepolyolcarboxylic acid derivative	Dec. 11, 1987.
P 87-0212	G Amine functional poly dimethyl siloxane	May 27, 1987.
P 87-0448	G Polyether polyurethane	Apr. 20, 1988
P 87-1010	G Substituted diphenyl pyrazoline	Dec. 6, 1988.
P 88-0528	G Polyarylphenol ethoxylate	Nov. 1, 1988.
P 88-0529	G Polyarylphenol ethoxylate	Nov. 1, 1988.
P 88-0531	G Polyarylphenol ethoxylate	Nov. 1, 1988.
P 88-0579	G Calcium salt of glycine derivative	Nov. 10, 1988.
P 88-1027	G Polyester of neopentyl glycol	Nov. 18, 1988.
P 88-1050	G Alkenyl dicarboxylic acid monoester, zinc salt	Nov. 15, 1988.
P 88-1213	G Bisphenol A glycidyl ether, polyglycol reaction product	Nov. 14, 1988.
P 88-1247	3-(Methoxyphenol)-3-oxopropanoic acid, methyl ester	July 26, 1988.
P 88-1248	G Substituted-alkylamino substituted-benzoic acid derivative	Aug. 15, 1988.
P 88-1546	Xylene-formaldehyde polymer, reaction with rosin	Sept. 10, 1988.
P 88-1637	G (Heteropolycyclic)heteropo ycyclic sulfonamide, potasslum salt	Nov. 23, 1988.
P 88-1639	G (Heteropolycyclic)heteropo ycyclic sufonamide	Nov. 10, 1988.
P 88-1720	G Sulfurized polyolefin	Nov. 22, 1988.
P 88-1745	G Alkoxylated dialkyl-diethylene triamine,aklyl sulfate salt	Dec. 2, 1988.
P 88-1770	G Polysulfide phenolic resin adduct	Nov. 16, 1988.
P 88-1784	G Isocyanate reaction with cyclic primary amines and alkylamines	Nov. 15, 1988.
P 88-1834	G Bisphenol A polycarbonate aryl end capped	Nov. 14, 1988.
P 88-1852	G Polymer of polyalkyleneamine and acrylamide acid salt	Nov. 21, 1988.
P 88-1876	G Ester imide-aldehyde	Nov. 22, 1988.
P 88-1916	G Polyurethane resin	Dec. 13, 1988.
P 88-1943	G Ester-aldehyde	Dec. 7, 1988.
Y 87-0086	G Water-reducible methacryl-styrene copolymer	Apr. 20, 1987.
Y 88-0328	G Organopolysiloxane copolymer	Nov. 27, 1988.
Y 88-0355	G Polyester polyol	Nov. 4, 1988.

V. 124 Premanufacture Notices for Which the Period Has Been Suspended

PMN No.

P 86-0065	P 86-0066	P 86-0067	P 88-0225	P 88-2179	P 88-2180	P 88-2181	P 88-2188	P 88-2436	P 88-2437	P 88-2463	P 88-2469
P 88-0900	P 88-1005	P 88-1221	P 88-1303	P 88-2190	P 88-2204	P 88-2210	P 88-2212	P 88-2470	P 88-2473	P 88-2484	P 88-2487
P 88-1425	P 88-1426	P 88-1446	P 88-1460	P 88-2213	P 88-2228	P 88-2229	P 88-2230	P 88-2529	P 88-2530	P 88-2536	P 88-2540
P 88-1617	P 88-1623	P 88-1753	P 88-1761	P 88-2236	P 88-2271	P 88-2275	P 88-2285	P 88-2561	P 88-2562	P 88-2563	P 88-2564
P 88-1763	P 88-1898	P 88-1937	P 88-1938	P 88-2286	P 88-2293	P 88-2294	P 88-2295	P 88-2566	P 88-2568	P 88-2571	P 88-2575
P 88-1940	P 88-1958	P 88-1980	P 88-1982	P 88-2296	P 88-2297	P 88—2298	P 88-2328	P 88-2576	P 88-2582	P 88-2587	P 88-2608
P 88-1984	P 88-1985	P 88-1995	P 88-2002	P 88-2330	P 88-2331	P 88-2332	P 88-2333	P 88-2614	P 88-2620	P 88-2631	P 88-2632
P 88-2008	P 88-2009	P 88-2013	P 88-2022	P 88-2334	P 88-2341	P 88-2343	P 88-2349	P 88-2633	P 89-0030	P 89-0031	P 89-0181
P 88-2069	P 88-2100	P 88-2110	P 88-2112	P 88-2359	P 88-2365	P 88-2367	P 88-2380	P 89-0198	P 89-0199	P 89-0200	P 89-0201
P 88-2132	P 88-2133	P 88-2145	P 88-2148	P 88-2389	P 88-2398	P 88-2399	P 88-2405				
P 88-2160	P 88-2169	P 88-2175	P 88-2177	P 88-2407	P 88-2422	P 88-2434	P 88-2435				

[FR Doc. 89-3998 Filed 3-2-89; 8:45am]

BILLING CODE 6560-50-M

federal register

Friday
March 3, 1989

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

February 1, 1989.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of February 1, 1989 of six rescission proposals and 14 deferrals contained in the first three special messages of FY 1989. These messages were transmitted to the Congress by President Ronald Reagan on September 30 and November 29, 1988, and January 9, 1989.

Rescissions (Table A and Attachment A)

As of February 1, 1989, there were six rescission proposals transmitted by President Reagan and totaling $143.1 million pending before the Congress.

Deferrals (Table B and Attachment B)

As of February 1, 1989, $7,670.7 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988

Vol. 53, FR p. 49530, Wednesday, December 7, 1988

Vol. 54, FR p. 1650, Friday, January 13, 1989

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by President Reagan.....	143.1
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	143.1

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TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by President Reagan.....	8,942.5
Routine Executive releases through February 1, 1989 (OMB/Agency releases of $1,277.9 million and cumulative adjustments of $6.0 million)	-1,271.9
Overturned by the Congress.....	0
Currently before the Congress.....	7,670.7

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of February 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congression Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs:								
Subsidized housing programs.....	R89-1		20,000	1-9-89				
Community Planning and Development:								
Urban development action grants.....	R89-2		51,651	1-9-89				
DEPARTMENT OF THE INTERIOR								
Fish and Wildlife Service:								
Land acquisition.....	R89-3		30,000	1-9-89				
National Park Service:								
Land acquisition and State assistance.....	R89-4		35,000	1-9-89				
DEPARTMENT OF JUSTICE								
Office of Justice Programs:								
Justice assistance.....	R89-5		5,000	1-9-89				
DEPARTMENT OF LABOR								
Employment Standards Administration:								
Black lung disability trust fund.....	R89-6		1,445	1-9-89				
TOTAL, RESCISSIONS.....			143,096					

Attachment B - Status of Deferrals - Fiscal Year 1989

As of February 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D89-11	4,122,750		11-29-88	750,000				3,372,750
Economic support fund	D89-01	592,760		09-30-88					
	D89-01A		2,054,000	11-29-88	469,913				2,176,847
Military assistance	D89-12	457,000		11-29-88	9,000				448,000
International military education and training	D89-13	37,400		11-29-88	37,400				0
Agency for International Development									
International disaster assistance	D89-14	18,125		11-29-88	4,796				13,329
Special Assistance for Central America									
Promotion of stability and security in Central America	D89-2	1,000		09-30-88					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D89-3	144,649		09-30-88	751				143,898
Cooperative work	D89-4	335,263		09-30-88					335,263
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D89-5	1,212		09-30-88					1,212
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Southwestern Power Administration, Operation and maintenance	D89-6	2,800		09-30-88					2,800

Attachment B - Status of Deferrals - Fiscal Year 1989

As of February 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 2-1-89
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration Limitation on administrative expenses (construction).....	D89-7	6,745		09-30-88					6,745
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund.....	D89-8	90,000		09-30-88					90,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive.....	D89-9 D89-9A	26,135	27,000	09-30-88 11-29-88	6,001			6,001	53,135
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D89-10 D89-10A	823,608	202,084	09-30-88 11-29-88					1,025,692
TOTAL, DEFERRALS.....		6,659,446	2,283,084		1,277,860	0		6,001	7,670,671

[FR Doc.89-4857 Filed 3-2-89; 8:45 am]

BILLING CODE 3110-01-C

Federal Register

Friday
March 3, 1989

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 110

Vaccine Information Materials; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Vaccine Information Materials

AGENCY: Public Health Service, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Public Health Service is proposing a regulation to require vaccine information materials to be distributed by each health care provider who administers vaccine set forth in the Vaccine Injury table contained in Title XXI, section 2114 (42 U.S.C. 300aa–14) of the Public Health Service Act. The proposed regulation would constitute a new subpart A of 42 CFR Part 110—Vaccine Information Materials and would implement section 2126 of the Public Health Service Act which requires development and dissemination of such materials. The materials health care providers must distribute would be included as an appendix to Subpart A; drafts of these materials are attached.

DATES: Written comments are invited and must be received on or before May 31, 1989. Plans for a public hearing, to be held in Atlanta, Ga., will be announced through a notice in a subsequent issue of the Federal Register.

ADDRESS: Written comments should be addressed to the Director, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333. Comments received will be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) in Room 314, 1600 Tullie Circle, Atlanta, Georgia. All comments received during the comment period, both in written form and during the public hearing, will be considered in developing the final rule and vaccine information materials.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333.

SUPPLEMENTARY INFORMATION: This NPRM and the appended vaccine information materials implement Title XXI, section 2126 (42 U.S.C. 300aa–26). Title XXI was amended by Pub. L. 100–203, approved December 22, 1987. Section 2126 requires the Secretary to develop and disseminate information materials on the vaccines included in the Vaccine Injury Table. These vaccines include those which immunize against diphtheria, tetanus, and pertussis; measles, mumps, and rubella; and poliomyelitis. Health care providers must distribute these materials to adults about to receive any of the covered vaccines and to the legal representatives of any child about to receive a vaccine. This section requires that the materials be published in the Federal Register, and specifically requires that the materials be developed or revised by rule. During the past five months, CDC in consultation with the National Institutes of Health and the Food and Drug Administration, has developed the proposed draft materials. We invite comments on the proposal from health care providers, parent organizations, and other interested parties.

Section 2126 requires that information contained in the materials be presented in understandable terms and must include:

(1) The frequency, severity, and potential long-term effects of the disease to be prevented by the vaccine,

(2) The symptoms or reactions to the vaccine which, if they occur, should be brought to the immediate attention of the health care provider,

(3) Precautionary measures legal representatives should take to reduce the risk of any major adverse reactions to the vaccine that may occur,

(4) Early warning signs or symptoms to which legal representatives should be alert as possible precursors to such major adverse reactions,

(5) A description of the manner in which legal representatives should monitor such major adverse reactions, including a form on which reactions can be recorded to assist legal representatives in reporting information to appropriate authorities,

(6) A specification of when, how, and to whom legal representatives should report any major adverse reaction,

(7) The contraindications to (and bases for delay of) the administration of the vaccine,

(8) An identification of the groups, categories, or characteristics of potential recipients of the vaccine who may be at significantly higher risk of major adverse reaction to the vaccine than the general population,

(9) A summary of relevant State and Federal laws concerning the vaccine, including information on—

(A) The number of vaccinations required for school attendance and the schedule recommended for such vaccinations, and

(B) The availability of the Program, and

(10) such other relevant information as may be determined by the Secretary.

The contents of the appended material meets these requirements. It should be noted that numbers (6) and (9) above require input by each State on its (1) respective vaccine laws and regulation requirements, and (2) procedures for reporting of adverse reactions, both of which vary considerably from State to State. Since CDC plans to furnish States with a camera-ready copy of the final materials, current plans are to leave space in appropriate areas of the materials for insertion of the required State information.

After inserting State specific information, each State would then print and disseminate sufficient quantities of the materials to public health clinics and other health care providers for distribution with each dose of vaccine purchased under a consolidated Federal contract. The cost of printing and disseminating these information materials would be paid for using the funds appropriated specifically for patient/parent notification activities.

Health care providers using privately purchased vaccine will be expected to pay the printing costs for the vaccine information materials which they must distribute in accordance with the Act. However, the States would distribute single camera-ready copies of the materials to these providers to facilitate the distribution of the information materials with the privately purchased vaccine. This cost would also be paid for using the funds appropriated specifically for patient/parent notification activities.

CDC anticipates that the information materials will be presented in printed booklets to the legal representatives or those about to be immunized. Comment is invited on the format, comprehensibility, and length of materials, and particularly on the amount of time required for vaccine recipients, or their legal representatives, to read the materials before the vaccine can be administered. In addition, comment is invited on alternative means for meeting these requirements.

Future revisions in the information materials would be published as an amendment to this subpart A. CDC proposes to publish technical amendments by notice in the Federal Register, to be effective immediately. Substantive changes would be published as a final rule subject to comment.

The Secretary has determined that this proposed rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed regulation does not contain information collection requirements which would have to be approved by the Office of Management and Budget under the Paperwork Reduction Act. Section 321 of Pub. L. 99-660 waives the Paperwork Reduction Act for information required for the purpose of carrying out Title III of Pub. L. 99-660, The National Childhood Vaccine Injury Act of 1986 as amended (42 U.S.C. 300aa-1 et sec).

List of Subjects in 42 CFR Part 110

Child health, Compensation, Immunization, Vaccines, Vaccine compensation, and Vaccine information requirements.

For reasons stated in the preamble, Subchapter J, Part 110, Subpart A of Title 42 of the Code of Federal Regulations, is proposed to be added as set forth below.

Dated: September 23, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Approved: November 7, 1988.

Otis R. Bowen,

Secretary.

SUBCHAPTER J—NATIONAL VACCINE PROGRAM

PART 110—INFORMATION AND EDUCATION

Subpart A—Vaccine Information Materials

Sec.

Appendices to Subpart A

Authority: Title XXI, section 2126 of the Public Health Service Act, as added November 14, 1986, P.L. 99-660, Title III, section 311(a), 100 Stat. 3775, and amended December 22, 1987, P.L. 100-203, Title IV, section 4302(b)(1), 101 Stat. 1330-221 (42 U.S.C. 300aa-26).

Subpart A—Vaccine Information Materials

§ 110.101 Applicability and purpose.

These regulations require health care providers to furnish vaccine information before administering a particular vaccine set forth in the Vaccine Injury Table. Section 2126 of the Act requires publication in the **Federal Register** of the vaccine information materials, the content of which is hereby attached at Appendix A.

§ 110.102 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act as amended.

"Advisory Commission on Childhood Vaccine" means the Commission established under section 2119 of the Act.

"Health Care Provider" means any licensed health care professional, organization, or institution, whether public or private (including Federal, State, and local departments, agencies and instrumentalities) under whose authority a vaccine set forth in the Vaccine Injury Table is administered.

"Legal Representative" means a parent or an individual who qualifies as a legal guardian under State law.

"Manufacturer" means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any vaccine set forth in the Vaccine Injury Table. The term "manufacture" means to manufacture, import, process, or distribute a vaccine.

"Secretary" means the Secretary of Health and Human Services or any other officer or employee to whom the Secretary's authority has been delegated.

"Significant aggravation" means any change for the worse in a pre-existing condition which results in markedly greater disability, pain, or illness accompanied by substantial deterioration of health.

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, territories and possessions.

"Vaccine Injury Table" means the table set out in Section 2114 of the Act.

"Vaccine-related injury or death" means an illness, injury, condition, or death associated with one or more of the vaccines set forth in the Vaccine Injury Table, except that the term does not include an illness, injury, condition, or death associated with an adulterant or contaminant intentionally added to such a vaccine.

§ 110.103 Provision of vaccine information materials.

Vaccine information appearing at the end of this subpart, designated as Appendix A, has been developed in accordance with the requirements of section 2126 of the Act. Effective 6 months after the date of publication of this subpart as a final rule, each health care provider who administers a particular vaccine set forth in the Vaccine Injury Table shall provide a copy of the relevant information materials the contents of which appear in Appendix A to any adult to whom such provider intends to administer such vaccine and to the legal representative of any child to whom such provider intends to administer such vaccine. As an alternative, health care providers may provide other written materials meeting the information requirements of the law and accompanying regulations. Such materials shall be provided prior to the administration of such vaccine.

§ 110.104 Revisions of vaccine information materials—Appendix A.

(a) Technical revisions to Appendix A shall be made from time to time by the Secretary by publication of a notice in the **Federal Register**, and will be effective immediately.

(b) Substantive revisions and amendments shall be made by notice published in the **Federal Register** as a final rule subject to a 60 day comment period.

Appendices to Subpart A

Appendix A(1)—Important Information About Diphtheria, Tetanus, and Pertussis and the Shots to Protect Against These Diseases

This booklet gives information about:

- The diseases diphtheria, tetanus (lockjaw), and pertussis (whooping cough)
- Shots (vaccines) to keep people from catching these diseases
- Problems (reactions) that can follow a shot,

—ways to try to prevent these problems

—problems that should be seen by a doctor at once

—a way to help you record information about these problems
—how and where to report serious problems
• When certain shots should be delayed or not given
• Your State immunization requirements and laws
• A National program for claiming compensation for injuries or deaths caused by a vaccine

What is Diphtheria?

Diphtheria is a very serious disease that causes a sore throat, a low fever, chills, and a grayish film in the throat. The film can make it hard to swallow and breathe, and may cause suffocation.

If diphtheria is not treated soon enough, the diphtheria germs make a poison that can cause serious problems such as a paralysis and heart failure. About 1 out of every 10 people who get diphtheria dies of it. People who are sick with diphtheria or those with the diphtheria germ in the nose or throat pass the germ to others, by coughing and sneezing. Only a few cases of diphtheria have occurred in the United States over the past few years. This is because people have been given shots to protect them against this terrible disease.

What is Tetanus?

Tetanus (lockjaw) is a serious disease caused by a poison from the tetanus germ. It starts with a headache and having trouble opening the mouth and swallowing. Tetanus poison causes painful convulsions (fits, seizures).

Tetanus germs can be found just about everywhere; in dirt, dust, and animal droppings. Tetanus is not passed from one person to another. Tetanus germs get into the body through cuts or scratches, and, if these are not treated, the germs grow and make the poison.

Doctors must use powerful drugs and medicines to treat the disease. Tetanus lasts for weeks and those sick with it must stay in a hospital. There are about 70 cases of tetanus in the U.S. each year. Almost no cases occur in children or young adults. This is because most children and young adults are protected by shots. Most tetanus occurs in older adults because many older adults have not gotten the shots that they need to protect them from the disease. In the U.S. tetanus kills 3 out of every 10 people who get the disease.

What is Pertussis?

Pertussis (whooping cough) is a disease of the lungs. It is caused by a germ that is easily passed by those sick with the disease to others by coughing or sneezing. Pertussis causes spells of coughing that make it hard to eat, drink, or breathe. Many children with pertussis get pneumonia (as many as 1 out of every 6 with pertussis). As many as 1 out of every 50 children with pertussis may have convulsions (fits, seizures); and as many as 1 out of every 200 may have brain problems (encephalopathy).

In the U.S., 1,000 to 4,000 cases of pertussis are reported each year. Sixty percent of children 6 months to 4 years of age who catch pertussis have received fewer than 3 shots of pertussis vaccine that are recommended (see Pertussis Vaccine on page ____). Most cases of pertussis occur in children under 5 years old. This disease is most dangerous for young children, especially babies. Most babies with pertussis are so sick that they must go into the hospital. One out of every 100 babies with pertussis may die.

Vaccines to Keep People from Getting Sick With Diphtheria, Tetanus, and Pertussis

The best way to be protected against getting any of these 3 diseases is to get certain shots (vaccines).

Diphtheria Vaccine (also called Diphtheria Toxoid)—Provides substances (antitoxins) in the blood that are considered to provide protection in at least 85 percent of people who get 3 or more vaccine shots. After children get the first 3 shots, experts believe that 1 or 2 more shots before the 7th birthday will provide better and longer lasting protection. Adults should get a shot every 10 years after the first 3 shots.

Tetanus Vaccine (also called Tetanus Toxoid)—As used in the childhood vaccines, DTP (diphtheris, tetanus, and pertussis) and DT/Td (diphtheria and tetanus) provides substances (antitoxins) in the blood that are considered to provide protection in at least 95 percent of people who get 3 or more vaccine shots. Another type of tetanus vaccine ("fluid") may protect fewer people. After children get the first 3 shots, experts believe that 1 or 2 more shots before the 7th birthday will provide better and longer lasting protection. Adults should get a shot every 10 years after the first 3 shots.

Pertussis Vaccine—Protects 75 to 85 percent of children who get at least 3 shots. Because pertussis (whooping cough) is most common and most serious in babies, the 3 shots are best given in the first 6 months of life. Some states require a total of more than 3 shots. Experts believe that 1 or 2 more shots given by the 7th birthday will provide better and longer lasting protection. Children up to 7 years old should get the vaccine. People 7 years old and older should NOT get pertussis shots.

These vaccines are usually mixed together as DTP (diphtheria, tetanus, and pertussis), or DT/Td (diphtheria and tetanus). The usual shots given to babies and children up to 7 years old is DTP. A series of DTP shots provides good protection against diphtheria, tetanus, and pertussis.

Some children should delay getting the DTP shots (see When Should a Shot Be Delayed on page ____) or should not get the pertussis part of DTP (see When Should a Shot Not be Given on page ____). Those children who should not get the pertussis part need to get shots known as DT (diphtheria and tetanus) to protect them against diphtheria and tetanus (lockjaw) disease.

Children 7 years old and all older persons cannot get DTP or DT. Persons in these age groups who need protection against diphtheria and tetanus should receive shots known as Td (tetanus and diphtheria). The diphtheria (d) part of Td is specially made for older children and adults. The combined (Td) shot is recommended by experts, but some doctors still use a shot which has only tetanus vaccine.

Problems Caused by Diphtheria, Tetanus, and Pertussis Vaccines

Experts agree that the benefits of shots against diphtheria, tetanus, and pertussis are much greater than the problems from the shots.

• Diphtheria and Tetanus Vaccine(s) (DT, Td, Tetanus)

DT, Td, or tetanus shots cause few problems. They may cause some soreness, swelling, and redness where the shot was given and a little fever.

As with any drug or shot, there is a rare chance that a serious problem (serious allergic or nerve problem) or even death could occur. If a serious problem occurs, a doctor should be seen as soon as possible.

• Pertussis Vaccine (DTP, Pertussis

Most children will have a little fever, soreness and redness at the shot site, and will act cranky (upset) following a DTP or pertussis shot. This is usually caused by the pertussis part of the shot.

Much less often, a child may have a serious problem following a DTP shot. Some children may have a fever with a temperature of 105 °F or higher (1 in every 330 DTP shots). Some children will cry without stopping for 3 hours or longer (1 in every 100 DTP shots). A child may have an odd high-sounding cry (1 in every 900 DTP shots). Even less often, a child may have a convulsion (fit, seizure) (1 in every 1,750 DTP shots) or have an episode of shock-collapse (become blue, pale, limp and not responsive) (1 in every 1,750 DTP shots).

Very rarely, a child may have brain damage that lasts the rest of his or her life (1 in every 340,000 DTP shots). Anyone who has one of these serious problems after a DTP shot should NOT get another pertussis shot but may get the diphtheria and tetanus shots.

As with any drug or shot there is a rare chance that other serious problems (serious allergic or nerve problem) or even death could occur. If a serious problem occurs, a doctor should be seen as soon as possible. Most of the information about the cause of Sudden Infant Death Syndrome (SIDS) shows that DTP shots do not cause SIDS.

When to Get Vaccine Shots and How Many a Child Should Get

Experts recommend that children should get 5 shots of DTP by the time the child first goes to school. Usually the 1st shot is given when the baby is about 2 months old, the 2nd shot at about 4 months, the 3rd at about 6 months, the 4th when the baby is 15 to 18 months, and the 5th shot is given when the child is 4 to 6 years old. Those children who should not get DTP (see When Should a Shot Not Be Given on page——) should get DT instead. Children 7 years old and older who never had DTP or DT should get three shots of Td.

When Should a Shot be Delayed?

Any of these vaccine shots—

- *Should* be delayed for anyone who is sick with something more serious than a common cold, until that person is better or the doctor okays the shot.
- *Should* be delayed for anyone who has ever had a convulsion (fit, seizure) or other problem of the brain or nervous system until fully examined by a doctor. (see Other Things You Should Know or Do on page——)
- *May* be delayed for anyone taking a special treatment for cancer (x-ray or cancer drugs) or special drugs that make it hard for the body to fight infection (prednisone or steroids). A doctor needs to decide when and which shots to give.

When Should a Shot Not Be Given?

Children 7 years old and older and all adults should NOT get DTP, pertussis, or DT shots, but they may get Td or tetanus shots.

Some shots (vaccines) may cause serious problems in certain people. *If any of the problems listed below occurred after a shot, you should tell the person who is going to give the next vaccine shot.* Usually, one of the other vaccine shots (one without the part that may have caused the problem) can be given. These problems may occur especially after a shot with pertussis vaccine.

- An allergy problem within 24 hours after getting the shot, where there was a problem with breathing; swelling in the mouth, throat, or face; or hives (a skin rash).
- A temperature of 105°F or higher within 48 hours after getting the shot.
- An episode of shock-collapse (becoming blue or pale, limp and not responsive) within 48 hours after getting the shot.
- Crying for more than 3 hours without being able to stop the crying by feeding or holding the child, occurring within 48 hours after getting the shot.
- A high-sounding cry that is unusual for the child, within 48 hours after getting the shot.
- A convulsion (fit, seizure) or other serious problem of the brain or nervous system within 7 days after getting the shot.

Other Things You Should Know or Do

1. For children who are to get DTP or pertussis shots—The doctor or other person who is going to give a shot should be told about a *personal* or *family history* of convulsions (fits, seizures). If the child who is to get a DTP or pertussis shot has ever had a convulsion (fit, seizure) or has a close family member (brother, sister, or parent) who has ever had a convulsion, the chance that this child might have a convulsion after a DTP or pertussis shot goes up.

A doctor should fully examine any child who has had a convulsion and then decide which shot this child is to get. Because there is still some chance of getting pertussis and because the chance of a convulsion is very low, ALMOST ALL children who have had a convulsion unrelated to receipt of DTP or pertussis shots and ALL children with a history of convulsion in close family members should get DTP or pertussis shots.

You should talk with the doctor or other person who is going to give a shot about using medicines or other measures to stop fever from the shots. If a serious problem occurs, a doctor should be seen as soon as possible.

2. What are your State laws for these shots? (See State Immunization Requirements on page——)

3. Do you have any questions about the diseases and shots after reading or being told about the information in this booklet? You need to ask any questions you have! Ask these questions NOW, either of the doctor or of the person who is going to give the shot. Only after all questions are answered to your satisfaction should you decide whether to get the shot.

4. You should sign the form below (or a similar one) before receiving a shot. The people who give shots will keep the form that you sign or they will write in your record or their office record what shot was given, when the shot was given, the name of the company that made the vaccine, and the vaccine's special lot number.

I have read or have had explained to me the information in this booklet about diphtheria, tetanus (lockjaw), and pertussis (whooping cough) disease and DTP, Pertussis, DT, Td, and Tetanus vaccine shots. I have had a chance to ask questions which were answered to my satisfaction. I believe I understand the benefits and risks of the DTP, Pertussis, DT, Td, and Tetanus vaccine shots and ask that the vaccine checked below be given to me or to the person named below for whom I am authorized to make this request.

Vaccine to be given: DTP ____, Pertussis ____, DT ____, Td ____, Tetanus ____

Information About Person to Receive Vaccine (Please Print)

Last Name	First Name	MI	Birthdate	Age

Address: Street	City	County	State	Zip

Signature of person to receive vaccine or person authorized to make the request (parent or guardian):
Date

X _____

What to Do After Getting the Shot and if a Serious Problem Occurs After Getting the Shot

• Most problems that occur after a DTP shot occur during the first few days. Therefore, the person getting the shot should be watched closely for at least 3 days.

• This form should be used to write down information about these and any other serious problems if they occur. It helps to get together the information you may need to report to a doctor.

Name of shot received _____
Date and time shot received _____

PROBLEM	DATE	TIME	HOW LONG	DESCRIBE
Measured fever 105° or higher				
Odd, high-sounding cry (squeal)				
Crying without stopping for 3 hours or more				
Shock-collapse (blue, pale, limp and not responsive)				
Loss of consciousness (coma), paralysis, brain problem				
Stopped breathing				
Sudden problem with breathing or swallowing; swollen mouth or face; or hives (skin rash)				
Any other serious problem				

• *If any of the problems listed on the form on page ___ occurs,* you should see a doctor as soon as possible. You should tell the doctor everything about the shot and describe the problem. Continue to write down information on the form.

• You also should call and report all the information you have written on the form to the doctor, person, or telephone number listed (see Information for Reporting of Problems Occurring After the Shot on page ___).

What Else to do if You Believe that the Person Who Received the Vaccine Shot was Injured (Made Seriously Ill) or Died Because of Receiving the Vaccine

The National Vaccine Injury Compensation Program provides a way for compensation of people who were injured (made seriously ill) or died because of receiving the vaccines you have just read or been told about. All claims for injuries (serious illnesses) or deaths related to the administration of these vaccines must be filed with the United States Claims Court. Information about the Compensation Program and about how to file a claim may be obtained from the

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(shown below is an example of how State immunization requirements and schedule may be written by each state)

(State Seal/Name or Other Identification)

"State Name" Immunization Requirements

STATE X law requires almost all children to get certain vaccines before they enter school. Before a child can attend school, proof that the child got the required vaccines must be shown. This proof must be a written record showing the month, day, and year of each shot, and the signature of the doctor or other person who gave each shot. Some children may not need to get certain shots.

Vaccines Which are Now Required by State X Law

• *Diphtheria, Tetanus, and Pertussis (DTP)*—4 vaccine shots for children under 7 years old

• *Tetanus and Diphtheria (Td)*—3 vaccine shots for children 7 years old and older

• *Polio*—3 doses of vaccine drops or shots for children under 18 years old

• *Measles*—1 shot of live virus vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with mumps and rubella vaccines as MMR vaccine)

• *Mumps*—1 shot of mumps vaccine given on or after the 1st birthday or a doctor's diagnosis of disease history (may be given with measles and rubella vaccines as MMR vaccine)

• *Rubella*—1 shot of rubella (German measles) vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with measles and mumps vaccine as MMR vaccine)

Who May be Exempted from Getting Vaccines Required by State X:

The following reasons may exempt some children from having to get certain vaccines that are usually required by State X immunization law.
(enter summary of exemptions allowed by State X e.g., medical, religious, and philosophical.)

Information for Reporting of Problems Occurring After a Shot

If the person who got a vaccine shot has a serious problem after the shot, you should report the problem to the doctor or other person who gave the shot, in addition to seeing a doctor.

Report the problem to:

Appendix A (2)—Important Information About Measles, Mumps, and Rubella and the Shots to Protect Against These Diseases

This booklet gives information about:

• The diseases measles, mumps, and rubella (German measles)
• Shots (vaccines) to keep people from catching these diseases
• Problems (reactions) that can follow a shot
—ways to try to prevent these problems.
—problems that should be seen by a doctor at once
—a way to help you record information about these problems
—how and where to report serious problems
• When certain shots should not be given until you check with a doctor
• Your State immunization requirements and laws
• A National program of compensation for injuries or deaths caused by a vaccine

What is Measles?

Measles is the most serious of the common childhood diseases. Usually it causes a rash, high fever, cough, runny nose, and watery eyes lasting 1 to 2 weeks. Sometimes it is more serious. It causes an ear infection or pneumonia in nearly 1 out of every 10 children who catch it. About 1 out of every 1,000 children who catch measles will have an inflammation of the brain (encephalitis).

This problem can cause convulsions (fits, seizures), loss of hearing, or mental retardation. About 1 out of every 10,000 children who catch measles dies from it. Measles can also cause a pregnant woman to lose her baby or have it born too early.

People catch measles by breathing in the measles germs. These germs are

passed on to others by people who have measles when they cough, sneeze, or just talk. Measles is so easy to catch that before measles vaccine was available, almost all children caught this disease by the time they were 15 years old.

Before measles shots were available, there were hundreds of thousands of measles cases and hundreds of deaths caused by measles in the United States every year. Now, wide use of the measles vaccine has almost caused measles to disappear from the United States. However, if children don't get the measles vaccine, they have a good chance of catching measles when they are still children or when they are older, when it might be even more serious.

What is Mumps?

Mumps is a common disease of children. Most of the time it causes a child who catches it to have a fever and headaches. It also causes a swelling of the salivary glands in the jaw, which then makes the cheeks swell. Sometimes mumps can be more serious. About 1 out of every 10 persons who catch mumps has a problem with the coverings of the brain and the spinal cord (meningitis). Even less often, persons with mumps can have a problem (inflammation) of the brain itself (encephalitis) which usually goes away without leaving a lifelong problem. Mumps can also cause people to lose their hearing. About 1 out of every 4 teenage boys or adult men who catch mumps gets a swelling of his testicles. Although this is painful, it rarely keeps them from being able to father a child.

People catch mumps by breathing in the mumps germs. These germs are passed on to others by people who have mumps when they cough, sneeze, or just talk.

Before mumps shots were available, almost all children caught mumps before they were grown. Now, because of the wide use of mumps vaccine, there are a lot fewer cases. However, if children don't get the mumps vaccine, they have a good chance of catching mumps when they are still children or when they are older. When teenagers and adults have mumps their illness is usually more serious and causes more complications than when children have it.

What is Rubella?

Rubella, also called German measles, is a common disease of children. But, it can also be caught by adults. Most of the time, rubella is a mild disease that causes a low fever, rash, and a swelling of glands in the neck. The sickness lasts for about 3 days. Sometimes, mostly in adult women, rubella may cause a swelling and soreness of the joints for a week or two. Very rarely, rubella can cause a problem (inflammation) of the brain (encephalitis) or cause a problem of bleeding under the skin (purpura) which usually lasts for only a few days.

The worst problem with rubella is when women who are pregnant get this disease. As many as one half of these women may lose their babies or have babies that are born crippled, blind, or with other serious health problems. The last big outbreak of rubella in the United States was in 1964. This was before there was a shot against rubella. Because of that outbreak, about 20,000 babies were born with serious health problems. Many were born deaf or blind, had heart damage, or had lifelong brain problems. These terrible health problems occurred because the mothers of these babies caught rubella during their pregnancy.

Rubella is very easy to catch. People catch rubella by breathing in the rubella germs. These germs are passed on to others by people who have rubella when they cough, sneeze, or just talk.

Before we had rubella shots, there was so much rubella around that most children caught the disease by the time they were 15 years old. Now, because of the wide use of rubella vaccine, there are fewer cases of the disease. However, if children don't get the rubella vaccine, they have a very good chance of catching rubella and maybe even passing it on to a pregnant women. Also, girls could catch it after they grow up and are pregnant themselves.

Since rubella is a mild disease, many adult women don't remember if they had a case of rubella when they were younger. About 1 out of every 5 women who are at an age to have children are still not protected against rubella.

Vaccines To Keep People From Getting Sick With Measles, Mumps, and Rubella

The best way to be protected against getting any of these 3 diseases is to get certain shots (vaccines).

Measles Vaccine—Protects at least 90 out of every 100 people who get the shot if they are at least 1 year old when they get the vaccine. This protection against measles is probably lifelong. Experts believe measles vaccine will protect even better if it is given when a child is 15 months old or older.

Mumps Vaccine—Protects at least 90 out of every 100 people who get the shot if they are at least 1 year old when they get the vaccine. This protection against mumps is probably lifelong.

Rubella Vaccine—Protects at least 90 out of every 100 people who get the shot if they are at least 1 year old when they get the vaccine. This protection against rubella is probably lifelong.

Only one shot of each of these vaccines is needed to give good protection. These vaccines are usually mixed together as MMR (measles, mumps, and rubella). But they also are available mixed as MR (measles and rubella) and RM (rubella and mumps), or as separate shots of measles or mumps or rubella.

Experts agree that these shots are safe for people who are already protected against measles, mumps, or rubella but who do not know it. Blood tests to measure protection are not necessary before any of the shots are given.

Problems Caused by Measles, Mumps, and Rubella Vaccines

Experts agree that the benefits of shots against measles, mumps, and rubella are much greater then the problems from the shots.

Local or Mild Problems

- *Measles Vaccine(s) (Measles, MMR, MR).* Measles vaccine, alone or mixed with rubella or mumps vaccine, will cause about 1 in every 5 children to have a rash or low fever. This usually begins 1 to 2 weeks after getting a measles shot and lasts for just a few days.
- *Mumps Vaccine(s) (Mumps, MMR, RM).* Sometimes there will be a little swelling of the salivary glands. This may happen 1 to 2 weeks afer getting a mumps shot.
- *Rubella Vaccine(s) (Rubella, MMR, MR, RM).* About 1 in every 7 children will have a rash or some swelling in the lymph glands 1 to 2 weeks after getting a rubella shot. This minor problem usually lasts for a day or two. About 1 in every 20 children and as many as 4 out of every 10 adults who get a rubella shot will have some pain and stiffness in the joints. Painful swelling of the joints happens to fewer than 1 out of 50 adults who get a rubella shot. Problems with joints occur from 1 to 3 weeks after a rubella shot. They are usually mild and last for only 2 or 3 days and rarely return. Other temporary problems caused by the shot are pain, numbness, or tingling in the hands and feet, but they are uncommon.

More Serious Problems

- *Measles, Mumps, and Rubella Vaccine(s) (Measles, Mumps, Rubella, MMR, MR, RM).* Experts are not sure why, but very rarely, children who get these vaccines (measles, mumps, and rubella) may have a convulsion(s) (fit, seizure), loss of hearing, or other problem of the brain (encephalitis).

As with any drug or shot, there is a rare chance that other serious problems (serious allergic or nerve problems) or even death could occur. If a serious problem occurs, a doctor should be seen as soon as possible.

When To Get Vaccine Shots and How Many Are Needed

Experts recommend that children should get the MMR shot when they are 15 months old or older. Anyone who is not known to be protected against measles, mumps, or rubella should receive a shot. It is important that teenagers and adults—especially women who can have babies—who may not be protected against rubella receive a rubella shot. They can get the MMR shot if they might also not be protected against measles or mumps.

When Should a Shot Not Be Given Until You Check With a Doctor?

You should tell the person who is going to give the shot if the person who is going to get the shot:

- Is sick with something more serious than a common cold.
- Has an allergy problem that occurred after eating eggs and was so serious that it required medical treatment (does not apply to the rubella shot given alone).
- Had an allergy problem that occured after using an antibiotic called neomycin and was so serious that it required medical treatment.
- Has cancer, leukemia, or lymphoma (cancer of the lymph glands).
- Has any other disease that makes it hard for the body to fight infection (for example AIDS or HIV infection).
- Is taking special treatment for cancer (X-ray or cancer drugs) or special drugs that make it hard for the body to fight infection (prednisone or steroids).
- Is pregnant or thinks she may be pregnant.
- Has received a shot of gamma globulin during the past 3 months.

Finally, shots should be delayed for anyone who is sick with something more serious than a cold until that person is better or a doctor okays the shot.

Other Things You Should Know or Do

1. For children who are to get the measles shot—

If the child who is to get a shot for measles has ever had a convulsion (fit, seizure) or has a close family member (brother, sister, or parent) who has ever had a convulsion, the chance that this child might have a convulsion after a measles shot is higher. Because there is still some chance of getting measles, and because the chance of a convulsion after getting a shot of measles vaccine is very low, all children who have had convulsions and all children with a history of convulsions in close family members should get a shot against measles.

The doctor or other person who is going to give the shot should be told about a personal or family history of convulsions. You should talk with them about using medicines or other measures to stop fever from shots. If a serious problem occurs, a doctor should be seen as soon as possible.

2. Measles, mumps, and rubella shots are not known to cause special problems for pregnant women or their unborn babies. However, doctors usually do not like to give any drugs or shots to pregnant women unless they have to. To be safe, pregnant women should not get these shots. Also, a woman who gets any of these shots should not get pregnant for 3 months following the shot.

3. If you cannot get these shots because you are pregnant, you should discuss this with the doctor who is caring for your pregnancy. It is very important for a pregnant woman to know for sure if she is protected against rubella.

4. Giving a shot to a child whose mother is pregnant is not dangerous to the unborn baby.

5. What are your State laws for these shots? (see State Immunization Requirements on page ____)

6. Do you have any questions about the diseases and shots after reading or being told about the information in this booklet? You need to ask any questions you have! Ask these questions *NOW*, either of the doctor of the person who is going to give the shot. Only after all questions are answered to your satisfaction should you decide whether to get the shot.

7. You should sign the form below (or a similar one) before receiving a shot. The people who give shots will keep the form that you sign or they will write in your record or their office record what shot was given, when the shot was given, the name of the company that made the vaccine, and the vaccine's special lot number.

I have read or have had explained to me the information in this booklet about measles, mumps, and rubella (German measles) and measles, mumps, and rubella vaccines. I have had a chance to ask questions which were answered to my satisfaction. I believe I understand the benefits and risks of the measles, mumps, and rubella vaccines and ask that the vaccine checked below be given to me to the person named below for whom I am authorized to make this request.

Vaccine to be given: Measles ____, Mumps ____, Rubella ____, Measles-Mumps-Rubella ____, Measles-Rubella ____, Rubella-Mumps ____

Information About Person To Receive Vaccine (Please Print)

Last Name First Name MI Birthdate Age

Address Street City County State Zip

Signature of person to receive vaccine or person authorized to make this request (parent or guardian)
Date

_____

What To Do After Getting the Shot and if a Serious Problem Occurs After Getting the Shot

- Most problems that occur after a measles, mumps, or rubella shot occur within 15 days after getting the shot. However, you should report to the person who gave the shot any serious problem that occurs within 4 weeks after getting the shot.
- This form should be used to write down information about these and any other serious problems if they occur. It helps to get together the information you may need to report to a doctor.

Name of shot received _____
Date and time shot received _____

Problem	Date	Time	How Long	Describe
Swollen mouth or face; hard to breathe or swallow				
Stopped breathing				
Loss of consciousness (coma) or other brain problem				
Convulsion (fit, seizure)				
Any other serious problem				

• *If any of the problems listed on the form on page ____ occurs,* you should see a doctor as soon as possible. You should tell the doctor everything about the shot and describe the problem. Continue to write down information on the form.

• You *also* should call and report all the information you have written on the form to the doctor, person, or telephone number listed (see Information for Reporting of Problems Occurring After the Shot on page ____)

What Else to do if you believe that the Person Who Received the Vaccine Shot Was Injured (Made Seriously Ill) or Died Because of Receiving the Vaccine

The National Vaccine Injury Compensation Program provides a way for compensation of people who were injured (made seriously ill) or died because of receiving the vaccines you have just read about. All claims for injuries (serious illnesses) or deaths related to the administration of these vaccines must be filed with the United States Claims Court. Information about the Compensation Program and about how to file a claim may be obtained from the _____.

(shown below is an example of how State immunization requirements and schedule may be written by each state)

(State Seal/Name or Other Identification)

"State Name" Immunization Requirements

STATE X law requires almost all children to get certain vaccines before they enter school. Before a child can attend school, proof that the child got the required vaccines must be shown. This proof must be a written record showing the month, day, and year of each dose of vaccine drops or shot of vaccine, and the signature of the doctor or other person who gave each dose of vaccine drops or shot of vaccine. Some children may not need to get certain vaccines.

Vaccines Which are Now Required by State X Law

• *Measles*—1 shot of live virus vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with mumps and rubella vaccines as MMR vaccine).

• *Mumps*—1 shot of vaccine given on or after the 1st birthday, or a doctor's diagnosis of disease history (may be given with measles and rubella vaccines as MMR vaccine).

• *Rubella*—1 shot of vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with measles and mumps vaccine as MMR vaccine).

• *Diphtheria, Tetanus, and Pertussis (DTP)*—4 shots of vaccine for children under 7 years old.

• *Tetanus and Diphtheria (Td)*—3 shots of vaccine for children under 18 years old.

• *Polio*—3 doses of vaccine drops or shots of vaccine for children under 18 years old.

Who May be Exempted from Getting Vaccines Required by State X

The following reasons may exempt some children from having to get certain vaccines that are usually required by State X immunization law.

(Enter summary of exemption allowed by State X e.g., medical, religious and philosophical.)

Information for Reporting of Problems Occurring After a Shot

If the person who got a vaccine shot has a serious problem after the shot, you should report the problem to the doctor or other person who gave the shot, in addition to seeing a doctor.

Report the problem to:

Appendix A (3)—Important Information About Poliomyelitis (Polio) and the Vaccine Drops or Shots to Protect Against this Disease

This booklet gives information about:

• The disease poliomyelitis (polio).

• Vaccines (drops or shots) to keep people from catching this disease.

• Problems (reactions) that can follow drops or a shot:

—ways to try to prevent these problems.
—problems that should be seen by a doctor at once.
—a way to help you record information about these problems.
—how and where to report serious problems.

• When polio vaccine (drops or shots) should be delayed or not given.

• Your State immunization requirements and laws.

• A National program of compensation for injuries or deaths caused by a vaccine.

What Is Polio?

Polio is a very serious disease and it can cause lifelong paralysis (crippling) of arms and legs and sometimes death. Most people who have the polio germ in their body only have a mild fever, headache, sore throat, or upset stomach. The polio germ lives in the intestines and passes from one person to another, usually by hands dirty with feces, and, rarely, from mouth to mouth.

Most people who get crippled by polio will have some weakness in an arm or leg for the rest of their lives. Many of these people will be badly crippled and unable to work.

In the United States, thousands of people used to be crippled by polio every year, and many died. Now, because people get polio vaccine which gives protection against this terrible disease, polio is very rare in the U.S. But there are still many thousands of polio cases in other parts of the world. So we must make sure that our children get all the polio vaccine they need to protect them if they travel outside the United States and to protect them in case polio germs get into the United States.

Vaccines to Keep People From Getting Sick With Polio

The best way to be protected against getting polio is to get at least 3 doses of polio vaccine as drops in the mouth (oral [live] polio vaccine-OPV) or as shots (inactivated [killed] polio vaccine-IPV). All healthy babies, children, and young people between the ages of 6 weeks and 18 years need to get at least 3 doses of polio vaccine (OPV drops or IPV shots) to protect them. Adults who plan to travel to areas of the world where there is polio also should have had polio vaccine.

More than 90 out of every 100 people who get at least 3 doses of OPV drops or IPV shots are protected against polio. Drops or shots should be given early in life. Some states require more than 3 doses of polio vaccine (drops or shots). Experts believe that 1 more dose of polio vaccine (drops or shot) given by the 7th birthday will provide better protection against polio.

Experts from government and doctors' groups recommend OPV drops rather than IPV shots as the preferred polio vaccine for healthy people up to the 18th birthday (see When Should OPV Drops Not Be Given? on page ____).

Although OPV drops and IPV shots are both very good in preventing polio,

the OPV is the type of polio vaccine most doctors give to children in the United States. The OPV is easier to take, works in the intestines (where the polio germs first start to grow), and gives protection for a long time, probably for life.

People 18 years old and older who are going to a country where there is polio should get polio vaccine (see When To Get Vaccine Drops or Shots and How Many are Needed on page ___).

Problems Caused by Polio Vaccine

• Oral Polio Vaccine (OPV) Drops

OPV drops cause few problems. But you should know that very rarely (one time for every 8 million doses of drops) the drops can cause crippling (paralytic polio) in the person who gets the drops. The chance of paralysis is highest after the 1st dose of drops (one time for every 1 to 2 million doses of drops). There is also a very small risk of crippling among people who have close contact with someone who got OPV drops within the previous 60 days (one time for every 5 to 6 million doses of drops). Good personal hygiene (hand washing) will make the risk even smaller. Anyone who has close contact with a person seriously ill with diseases such as cancer or leukemia, or with a person taking medicines (such as steroids or prednisone) that lower that person's resistance to infection should *NOT* get OPV drops.

• Inactivated Polio Vaccine (IPV) Shots

Serious illnesses are very rare after IPV shots. IPV shots can cause a little soreness and redness where the shot was given. As with any drug or shot, there is a rare chance that a serious allergic problem or even death could occur. If a serious problem occurs, a doctor should be seen as soon as possible.

When To Get Vaccine Drops or Shots and How Many Are Needed

Every child should get 4 doses of polio vaccine (OPV drops or IPV shots) by the time he or she first goes to school. Usually, the 1st dose of OPV or shot of IPV is given when the baby is about 2 months old, the 2nd at about 4 months, the 3rd when the baby is 15 to 18 months old, and the 4th dose of OPV drops or IPV shot when the child is 4 to 6 years old.

Adults who have had some OPV drops before and are going to a country where there is polio need at least 1 dose of OPV drops or 1 IPV shot. If these adults have never had OPV drops or IPV shots, they should get, if there is enough time, 2 or 3 IPV shots before going. If there is less than one month before they leave, they should get at least 1 dose of either OPV or IPV. If they get only one dose of OPV or IPV, it should be given a minimum of 1 to 2 days before they leave.

When Should Drops or Shot Be Delayed?

Oral Polio Vaccine (OPV) Drops

Should be delayed for anyone who is sick with something more serious than a common cold, until that person is better or a doctor okays the dose of OPV drops or a doctor decides the IPV shots should be used instead.

Inactivated Polio Vaccine (IPV) Shots

Should be delayed for anyone who is sick with something more serious than a common cold, until that person is better or the doctor okays the shot of IPV.

When Should Polio Vaccine Not Be Given?

Oral Polio Vaccine (OPV) Drops

OPV drops should not be given to anyone who:

• Has cancer, leukemia, or lymphoma (cancer of the lymph glands), or has close contact with such a seriously ill person.

• Has any other disease that makes it hard for the body to fight infection (for example AIDS or HIV infection).

• Is taking special treatment for cancer (X-ray or cancer drugs) or taking drugs that make it hard for the body to fight infection (prednisone or steroids), or has close contact with such a person.

You should talk to a doctor about *which* polio vaccine should be given.

Inactivated Polio Vaccine (IPV) Shots

IPV shots should not be given to a person who:

• Has a serious allergy problem with certain antibiotics. For people with allergies to antibiotics, a doctor should decide if the shot can be given.

Other Things You Should Know or Do

1. What are your State laws for polio drops or shots? (see State Immunization Requirements on page —)

2. Do you have any questions about polio and OPV and IPV vaccines after reading or hearing the information in this booklet? You need to ask any questions you have! Ask these questions *NOW*, either of the doctor or of the person who is going to give the vaccine drops or shot. Only after all questions are answered to your satisfaction should you decide whether to get the vaccine.

3. You should sign the form below (or a similar one) before receiving the vaccine. The people who give the vaccine will keep the form that you sign or they will write in your record or their office record what type of vaccine was given, when the vaccine was given, the name of the company that made the vaccine, and the vaccine's special lot number.

"I have read or have had explained to me the information in this booklet about polio disease and OPV and IPV vaccines. I have had a chance to ask questions which were answered to my satisfaction. I believe I understand the benefits and risks of the OPV and IPV vaccines and ask that the vaccine checked below be given to me or to the person named below for whom I am authorized to make this request."

Vaccine to be given: OPV___, IPV___

Information About Person To Receive Vaccine (Please Print)

Last Name	First Name	MI	Birthdate	Age

Address: Street	City	County	State	Zip

Signature of person to receive vaccine or person authorized to make this request (parent or guardian):
Date

X_____

What to Do After Getting the Vaccine and if a Serious Problem Occurs After Getting the Vaccine

• Problems are very rare. Serious crippling or paralysis within 30 days after getting OPV drops may be caused by the drops. Rarely, crippling may occur in a person who has had close contact with a person who got drops up to 75 days before.

• This form should be used to write down information about these and any other serious problems if they occur. It helps to put down the information you may need to report to a doctor.

Name of vaccine received (OPV drops or IPV shot) _____
Date and time vaccine received _____

Problem	Date	Time	How Long	Describe
Weakness of arm or leg (crippling, paralysis)				
Sudden problem with breathing or swallowing and/or swollen mouth or face				
Any other serious problem				

• *If any of the problems listed on the form on page——occurs, you should see a doctor as soon as possible.* You should tell the doctor everything about the problem. You should continue to write down information on the form.

• You *also* should call and report all of the information you have written on the form to the doctor, person, or telephone number listed (see Information for Reporting of Problems Occurring After Vaccine Drops or Shot on page——).

What else to do if you believe that the person who received the Vaccine Drops or Shot was Injured (Made Seriously Ill) or Died Because of Receiving the Vaccine

The National Vaccine Injury Compensation Program provides a way to compensate people who were injured (made seriously ill) or died as a result of the vaccines you have just read or been told about. All claims for injuries (serious illnesses) or deaths related to these vaccines must be filed with the United States Claims Court. Information about the Compensation Program and about how to file a claim may be obtained from the_____.

(Shown below is an example of how State immunization requirements and schedule may be written by each state)

(State Seal/Name or Other Identification)

"State Name" Immunization Requirements

STATE X law requires almost all children to get certain vaccines before they enter school. Before a child can attend school, proof that the child got the required vaccines must be shown. This proof must be a written record showing the month, day, and year of each dose of vaccine (drops or shot), and the signature of the doctor or other person who gave each dose of vaccine (drops or shot). Some children may not need to get certain vaccines.

Vaccines Which are Required by State X Law

• Polio—3 doses of vaccine drops or shots of vaccine for children under 18 years old

• Diphtheria, Tetanus, and Pertussis (DTP)—4 shots of vaccine for children under 7 years old

• Tetanus and Diphtheria (Td)—3 shots of vaccine for children under 18 years old

• Measles—1 shot of live virus vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with mumps and rubella vaccines as MMR vaccine)

• Mumps—1 shot of vaccine given on or after the 1st birthday, or a doctor's diagnosis of disease history (may be given with measles and rubella vaccines as MMR vaccine)

• Rubella—1 shot of vaccine given on or after the 1st birthday, or a blood titer of at least 1:8 (may be given with measles and mumps vaccine as MMR vaccine)

Who may be Exempted from Getting Vaccines Required by State X

The following reasons may exempt some children from having to get certain vaccines that are usually required by State X immunization law.

(enter summary of exemptions allowed by State X e.g., medical, religious, and philosophical.)

Information for Reporting of Problems Occurring After Vaccine Drops or Shot

If the person who got vaccine drops or shot has a serious problem after the drops or shot, you should report the problem to the doctor or other person who gave the vaccine, in addition to seeing a doctor.

Report the problem to:

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federal register

Friday
March 3, 1989

Part VI

The President

Proclamation 5939—Save Your Vision Week, 1989

Federal Register
Vol. 54, No. 41
Friday, March 3, 1989

Presidential Documents

Title 3—

The President

Proclamation 5939 of March 1, 1989

Save Your Vision Week, 1989

By the President of the United States of America

A Proclamation

Vision is a precious gift—one we too often take for granted until it is impaired or lost entirely. For thousands of Americans, this is a needless loss because sight-saving treatments are now available for many disorders that once caused blindness. Generally, the earlier a disease is detected, the better the chance of interrupting its destructive process. Therefore, if we take some simple precautions, most of us can expect to enjoy good vision all of our lives.

A periodic examination by an eye-care professional is the best way to detect an eye problem before it impairs or destroys vision. This is especially important for young children; diabetics, who are at increased risk for several eye diseases; and older Americans, who are at higher risk for glaucoma, aging-related retinal degeneration, and cataracts.

Because visual problems in young children are often difficult to detect, a professional eye examination is vital. An untreated eye problem in a child may needlessly interfere with learning or play or lead to permanent visual loss. At a minimum, children should have their vision checked by their pediatrician, family physician, or an eye specialist at or before age four.

For the more than 11 million Americans who have diabetes, regular eye checkups are especially important for preventing loss of vision. For years, diabetic retinopathy has been the leading cause of new cases of blindness among middle-aged Americans. Now, however, improved treatments for this disease can save many thousands from blindness—if treatment is begun early.

Because many aging-related eye diseases begin in the middle years, periodic eye examinations are important for everyone older than 40. For example, glaucoma can begin unnoticed in middle age and gradually progress to blindness. A simple, painless test to measure pressure within the eye is used to screen for possible glaucoma. If the disease is suspected, other tests are used to confirm the diagnosis. Detected early, glaucoma usually can be controlled by medications before serious damage is done to the optic nerve.

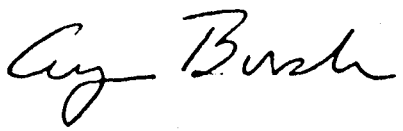
Early detection of aging-related retinal disease is also important. Thanks to research supported by the Federal Government's National Eye Institute, laser treatment has been shown to be effective in preserving the reading vision of those with an advanced form of this disease.

The old adage about "an ounce of prevention" is certainly true for eye injuries. Of the estimated 1.6 million eye injuries that occur each year, 90 percent are preventable—by learning and following simple rules of eye safety in the workplace, athletic arena, home, or garden, we can prevent serious visual loss due to accident. For example, safety glasses worn while working with chemicals, or protective headgear while playing a contact sport, can mean the difference between a lifetime of good vision and permanently limited or lost eyesight.

To remind all Americans of the importance of proper eye care, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629, 36 U.S.C. 169a), has requested the President to proclaim the first week in March of each year as "Save Your Vision Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week of March 5 through March 11, 1989, as "Save Your Vision Week." I urge all Americans to participate in this observance by making eye care and eye safety an important part of their lives. I also invite eye-care professionals, the media, and all public and private organizations committed to public health to join in activities that will make Americans more aware of the steps they can take to protect their vision.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



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